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ESTABLISHED 1864

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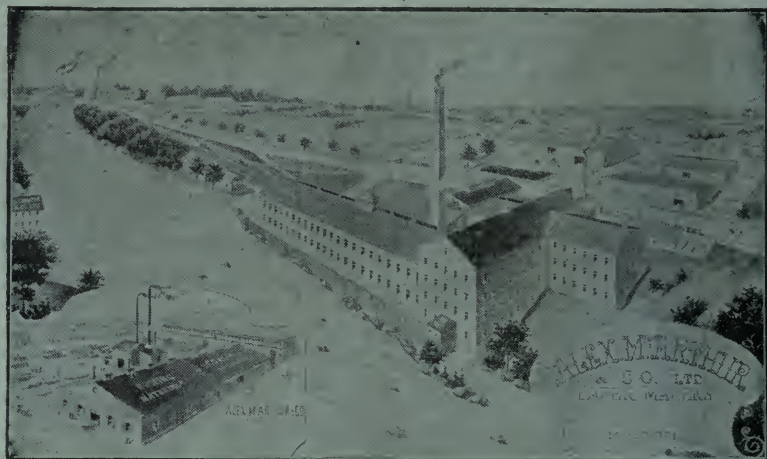
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	Beauharnois, Q.	Western Bank of Canada,	
Banque Provinciale du Canada,			Blackstock, Ont.
	Beauport, Q.	Union Bank of Canada,	
Northern Crown Bank			Blairmore, Alta.
	Beausejour, Man.	Canadian Bank of Commerce,	
Standard Bank of Canada,			Blenheim, O.
	Beaverton, Q.	Standard Bank of Canada,	
Eastern Townships Bank,			Blenheim, O
	Bedford, Q.	Traders' Bank of Canada,	
Eastern Townships Bank,			Blind River, O.
	Beebe Plain, Q.	Standard Bank of Canada,	
Traders' Bank of Canada,			Bloomfield, O.
	Beeton, O.	Bank of British North America,	
Home Bank of Canada,			Bobcaygeon, Ont.
	Belle River, O.	Bank of Hamilton	Blyth, O.
Bank of Hamilton, Belle Plaine, Sask.		Dominion Bank, ..	Boissevain, Man.
Bank of Montreal.. . .	Belleville, O.	Union Bank of Canada,	
Canadian Bank of Commerce,			Boissevain, Man.
	Belleville, O.	Imperial Bank of Canada..	Bolton, O.
Dominion Bank.. . . .		Standard Bank of Canada,	
	Belleville, O.		Bond Head, O.
Merchants' Bank of Canada,		Merchants Bank of Canada,	
	Belleville, O.		Bothwell, O.
		Union Bank of Canada, Bowden, Alta.	

BANKS AND THEIR AGENCIES.

Bank of Montreal...Bowmanville, O.	Western Bank of Canada, Bright, O.
Royal Bank of Canada, Bowmanville, O.	Metropolitan Bank, Brighton, Ont.
Standard Bank of Canada, Bowmanville, O.	Standard Bank of Canada, Brighton, O.
Bank of Ottawa...Bracebridge, O.	Imperial Bank of Canada, Broadview, Sask.
Northern Crown Bank, Bracebridge, O.	Bank of Montreal...Brockville, O.
Bank of Toronto...Bradford, O.	Bank of Toronto...Brockville, O.
Standard Bank of Canada, Bradford, O.	Northern Crown Bank, Brockville, O.
Bank of Hamilton, Bradwardine, Man.	Metropolitan Bank...Brockville, O.
Dominion Bank...Brampton, O.	Molsons Bank...Brockville, O.
Merchants Bank of Canada, Brampton, O.	Eastern Townships Bank..Brome, Q.
Bank of British North America, Brandon, Man.	Eastern Townships Bank, Bromptonville, Q.
Bank of Hamilton .. Brandon, Man.	Western Bank of Canada, Brooklin, Ont.
Bank of Montreal...Brandon, Man.	Bank of Hamilton. Brownlee, Sask.
Canadian Bank of Commerce, Brandon, Man.	Traders' Bank of Canada, Brownsville, O.
Dominion Bank...Brandon, Man.	Farmer's Bank of Canada, Brucefield, O.
Imperial Bank of Canada, Brandon, Man.	Traders' Bank .. Bruce Mines, Ont.
Merchants Bank of Canada, Brandon, Man.	Metropolitan Bank .. Brussels, Ont.
Northern Crown Bank, Brandon, Man.	Standard Bank of Canada, Brussels, O.
Union Bank of Canada, Brandon, Man.	Bank of Montreal...Buckingham, Q.
Bank of British North America, Brantford, Ont.	Bank of Ottawa ...Buckingham, Q.
Bank of Hamilton .. Brantford, O.	Bank of Toronto .. Burford, O.
Bank of Montreal...Brantford, O.	Northern Crown Bank..Burford, Ont.
Bank of Nova Scotia. .Brantford, O.	Farmers' Bank of Canada, Burgessville, O.
Bank of Toronto .. Brantford, O.	Royal Bank of Canada, Burk's Falls, O.
Canadian Bank of Commerce, Brantford, Ont.	Bank of Nova Scotia..Burlington, O.
Imperial Bank of Canada, Brantford, O.	Traders' Bank of Canada, Burlington, O.
Standard Bank of Canada, Brantford, Ont.	Quebec Bank...Cache Bay, Ont.
Standard Bank of Canada, Brechin, O.	Bank of British North America, Cainsville, O.
Metropolitan Bank...Brigden, O.	Western Bank of Canada, Caledonia, O.
Traders' Bank of Canada, Bridgeburg, O.	Bank of Montreal...Calgary, Alta.
Bank of Nova Scotia, Bridgetown, N.S.	Bank of British North America, Calgary, Alta.
Union Bank of Halifax, Bridgetown, N.S.	Bank of Nova Scotia, Calgary, Alta.
Bank of Montreal...Bridgewater, N.S.	Canadian Bank of Commerce, Calgary, Alta.
Canadian Bank of Commerce, Bridgewater, N.S.	Dominion Bank ..Calgary, Alta.
Royal Bank of Canada, Bridgewater, N.S.	Imperial Bank of Canada, Calgary, Alta.
Union Bank of Halifax, Bridgewater, N.S.	Imperial Bank of Canada, East End, Calgary, Alta.
	Merchants Bank of Canada, Calgary, Alta.
	Molsons Bank...Calgary, Alta.
	Northern Crown Bank, Calgary, Alta.
	Royal Bank of Canada, Calgary, Alta.

BANKS AND THEIR AGENCIES.

Traders' Bank of Canada,	Canadian Bank of Commerce,
Calgary, Alta.	Cayuga, Ont.
Union Bank of Canada..Calgary, Alta.	Bank of Hamilton .. . Cayley, Alta.
Farmers' Bank of Canada,	Banque Provinciale du Canada,
Camden, East, O.	Cedar Hall, Que.
Bank of British North America,	Bank of Montreal,
Campbellford, Ont.	Charlottetown, P.E.I.
Standard Bank of Canada,	Bank of New Brunswick,
Campbellford, Ont.	Charlottetown, P.E.I.
Bank of Nova Scotia,	Bank of Nova Scotia,
Campbellton, N.B.	Charlottetown, P.E.I.
Bank of New Brunswick,	Canadian Bank of Commerce,
Campbellton, N.B.	Charlottetown, P.E.I.
Bank of Ottawa ..Campbell's Bay, Q.	Royal Bank of Canada,
Merchants Bank of Canada,	Charlottetown, P.E.I.
Camrose, Alta.	Union Bank of Halifax,
Bank of Nova Scotia.. Canning, N.S.	Charlottetown, P.E.I.
Home Bank of Canada..Cannington, O.	Bank of Montreal.. Chatham, O.
Standard Bank of Canada,	Canadian Bank of Commerce,
Cannington, Ont.	Chatham, Ont.
Canadian Bank of Commerce,	Dominion Bank.. Chatham, O.
Canora, Sask.	Merchants' Bank of Canada,
Bank of Montreal .. Canso, N.S.	Chatham, Ont.
Banque Nationale, Cap St. Ignace, Q.	Standard Bank of Canada,
Bank of Hamilton.. ..Carberry, Man.	Chatham, Ont.
Merchants' Bank of Canada,	Bank of Montreal .. Chatham, N.B.
Carberry, Man.	Bank of Nova Scotia..Chatham, N.B.
Union Bank of Canada,	Merchants Bank of Canada,
Carberry, Man.	Chatsworth, O.
Bank of Toronto.. Cardinal, Ont.	Farmers' Bnk of Canada,
Bank of Montreal. Cardston, Alta.	Cheltenham, Ont.
Union Bank of Canada,	Bank of Hamilton .. .Chesley, Ont.
Cardston, Alta.	Merchants Bank of Canada,
Traders' Bank of Canada,	Chesley, Ont.
Cargill, Alta.	Bank of Ottawa.. ..Chesterville, O.
Bank of Hamilton.. Carievale, Sask.	Molsons Bank .. Chesterville, O.
Union Bank of Canada,	Banque Nationale.. ..Chicoutimi, Q.
Carlyle, Sask.	Molsons Bank.. .. .Chicoutimi, Q.
Bank of Ottawa.. Carleton Place, O.	Bank of Montreal.. Chilliwack, B.C.
Union Bank of Canada,	Royal Bank of Canada
Carleton Place, O.	Chilliwack, B.C.
Bank of Hamilton .. Carman, Man.	Bank of New Brunswick,
Canadian Bank of Commerce,	Chipman, N.B.
Carman, Man.	Royal Bank of Canada,
Union Bank of Canada..Carman, Man.	Chippawa, O.
Merchants Bank of Canada,	Standard Bank of Canada,
Carnduff, Sask.	Claremont, O.
Union Bank of Canada,	Eastern Townships Bank,
Cardston, Alta.	Clarenceville, Que.
Bank of Ottawa Carp, Ont.	Canadian Bank of Commerce,
Bank of Hamilton.. ..Caron, Sask.	Claresholm, Alta.
Merchants Bank of Canada,	Union Bank of Canada,
Carstairs, Alta.	Claresholm, Alta.
Union Bank of Canada,	Union Bank of Halifax,
Carstairs, Alta.	Clarke's Harbour, N.S.
Bank of Toronto. ..Cartwright, Man.	Traders' Bank of Canada,
Standard Bank of Canada,	Clifford, O.
Castleton, O.	

BANKS AND THEIR AGENCIES.

Molsons Bank...	Clinton, O.	Imperial Bank of Canada,	
Royal Bank of Canada...	Clinton, Ont.		Cranbrook, B.C.
Eastern Townships Bank,		Northern Crown Bank,	Crandall, Man.
	Coaticook, Que.	Canadian Bank of Commerce,	
Banque Nationale,	Coaticook, Q.		Crediton, O.
Bank of Ottawa...	Cobalt, Ont.	Union Bank of Halifax,	
Canadian Bank of Commerce,			Crapaud, P.E.I.
	Cobalt, O.	Merchants Bank of Canada,	
Imperial Bank of Canada,	Cobalt, O.		Creemore, Ont.
Royal Bank of Canada,		Bank of Toronto...	Creemore, O.
	Cobalt, Ont.	Canadian Bank of Commerce,	
Bank of Ottawa...	Cobden, O.		Creston, B. C.
Metropolitan Bank...	Cobourg, O.	Canadian Bank of Commerce,	
Bank of Toronto,	Cobourg, O.		Crossfield, Alta.
Dominion Bank...	Cobourg, O.	Union Bank of Canada...	Crysler, O.
Standard Bank of Canada,		Union Bank of Canada,	
	Cobourg, O.		Crystal City, Man.
United Empire Bank of Canada,		Royal Bank of Canada,	
	Cobourg, O.		Cumberland, B.C.
Union Bank of Canada,		Union Bank of Canada,	Cupar, Sask.
	Cochrane, Alta.	Union Bank of Canada,	
Standard Bank of Canada,			Cypress River, Man.
	Colborne, Ont.	Royal Bank of Canada,	
Bank of Toronto...	Colborne, O.		Dalhousie, N.B.
Bank of Toronto...	Coldwater, O.	Bank of Montreal...	Danville, Q.
Eastern Townships Bank,		Eastern Townships Bank,	"
	Coleman, Alta.	Bank of British North America,	
Bank of Toronto...	Collingwood, O.		Darlingford, Man.
Bank of Montreal	Collingwood, O.	Bank of Nova Scotia,	
Canadian Bank of Commerce,			Dartmouth, N.S.
	Collingwood, O.	Union Bank of Halifax,	
Traders' Bank of Canada,			Dartmouth, N.S.
	Collingwood, O.	Farmer's Bank of Canada,	
Northern Crown Bank...	Comber, O.		Dashwood, O.
Standard Bank of Canada,		Bank of Ottawa...	Dauphin, Man.
	Consecon, Q.	Canadian Bank of Commerce,	
Bank of Montreal...	Cookshire, Q.		Dauphin, Man.
Eastern Townships Bank,		Union Bank of Canada...	Dauphin, Man.
	Cookshire, Q.	Bank of British North America,	
Union Bank of Canada,			Davidson, Sask.
	Cookstown, O.	Bank of British North America,	
Bank of Toronto...	Copper Cliff, O.		Dawson, Yukon.
Bank of Montreal...	Cornwall, O.	Canadian Bank of Commerce,	
Royal Bank of Canada,			Dawson City, Yukon.
	Cornwall, O.	Merchants Bank of Canada,	
Sterling Bank of Canada,			Daysland, Alta.
	Cornwall, Ont.	Bank of Hamilton...	Delhi, Ont.
Banque Provinciale du Canada,		Canadian Bank of Commerce,	
	Coteau Station, Q.		Delisle, Sask.
Sterling Bank of Canada,		Dominion Bank...	Deloraine, Man.
	Courtright, Ont.	Union Bank of Canada,	
Eastern Townships Bank,			Deloraine, Man.
	Cowansville, Que.	Merchants Bank of Canada...	Delta, O.
Union Bank of Canada...	Cowley, Alta.	Banque Nationale...	Deschailions, Q.
Union Bank of Canada...	Craik, Sask.	Bank of Montreal...	Deseronto, O.
Canadian Bank of Commerce,		Standard Bank of Canada,	
	Cranbrook, B.C.		Deseronto, O.

BANKS AND THEIR AGENCIES.

Union Bank of Canada, Didsbury, Alta.	Eastern Townships Bank,
Bank of Nova Scotia... Digby, N.S.	East Broughton, Q.
Union Bank of Halifax... Digby, N.S.	Bank of New Brunswick,
Banque Provinciale du Canada,	East Florenceville, N.B.
D'Israeli, Que	Eastern Townships Bank,
Eastern Townships Bank	East Hatley, Que.
Dixville, Que.	Metropolitan Bank.. East Toronto, O.
Union Bank of Halifax,	Traders' Bank of Canada,
Dominion, C.B.	East Toronto.
Royal Bank of Canada,	Eastern Townships' Bank,
Dorchester, N.B.	Eastman, Q.
Bank of Toronto .. .Dorchester, O	Northern Crown Bank..Eburne, B.C.
Traders' Bank of Canada,	Northern Crown Bank,
Drayton, Ont.	Edmonton, Alta.
Canadian Bank of Commerce,	Banque d'Hochelaga, Edmonton, Alta.
Dresden, Ont.	Bank of Hamilton...Edmonton, Alta.
Dominion Bank .. .Dresden, O.	Imperial Bank of Canada,
Canadian Bank of Commerce,	Edmonton, Alta.
Drinkwater, Sask.	Bank of Montreal, ..Edmonton, Alta.
Bank of British North America,	Bank of Nova Scotia,
Duck Lake, Sask.	Edmonton, Alta.
Molsons Bank... ..Drumbo, O.	Canadian Bank of Commerce,
Western Bank of Canada,	Edmonton, Alta.
Dublin, O.	Dominion Bank, ..Edmonton, Alta.
Bank of British North America,	Merchants Bank of Canada,
Duncans, B.C.	Edmonton, Alta.
Molsons Bank.. ..Drummondville, Q.	Molsons Bank .. .Edmonton, Alta.
Banque de St. Hyacinthe,	Northern Crown Bank,
Drummondville, Que.	Edmonton, Alta.
Bank of Hamilton... ..Dundalk, Ont.	Royal Bank of Canada,
Canadian Bank of Commerce,	Edmonton, Alta.
Dundas, Ont.	Traders' Bank of Canada,
Bank of Hamilton... ..Dundas, Ont.	Edmonton, Alta.
Bank of Hamilton .. Dundurn, Sask.	Union Bank of Canada,
Northern Crown Bank,	Edmonton, Alta.
Dundurn, Sask.	Bank of Montreal..Edmundston, N.B.
Sterling Bank of Canada,	Royal Bank of Canada,
Dungannon, O.	Edmundston, N.B.
Eastern Townships Bank, Dunham, Q.	Merchants Bank of Canada,
Bank of Hamilton .. .Dunnville, O.	Eganville, O.
Canadian Bank of Commerce,	Bank of Montreal .. .Eglinton, O.
Dunnville, Ont.	Canadian Bank of Commerce.
Bank of Hamilton .. .Dunrea, Man.	Elbow, Sask.
Canadian Bank of Commerce,	Canadian Bank of Commerce,
Durban, Man.	Elgin, Man.
Standard Bank of Canada,	Merchants Bank of Canada..Elgin, O.
Durham, Ont.	Canadian Bank of Commerce,
Traders' Bank of Canada,	Elkhorn, Man.
Durham, O.	Royal Bank of Canada,
Farmers Bank of Canada,	Elk Lake, Ont.
Dunsford, Ont.	Bank of Hamilton, Elm Creek, Man.
Molsons Bank... ..Dutton, O.	Metropolitan Bank.. Elmira, O
Traders' Bank of Canada,	Traders' Bank of Canada,
Dutton, O.	Elmira, O.
Northern Crown Bank Earl Grey, Sask,	Western Bank of Canada,
Banque Nationale,	Elmvale, Ont.
East Broughton, Q.	Bank of Toronto .. .Elmvale, Ont.
	Royal Bank of Canada. ..Elmwood, O.

BANKS AND THEIR AGENCIES.

Merchants Bank of Canada..Elora, O.
 Traders' Bank of Canada..Elora, O.
 Farmers' Bank of Canada,
 Embro, Ont.
Traders' Bank of Canada,
 Embro, O.
 Bank of Ottawa... ..Emerson, Man.
Bank of Montreal,... ..Enderby, B.C.
 Union Bank of Canada,
 Englehart, Ont.
 Northern Crown Bank, Enterprise, O.
 Union Bank of Canada... ..Erin, O.
 Imperial Bank of Canada... ..Essex, O.
 Union Bank of Canada,
 Esterhazy, Sask.
 Bank of British North America,
 Estevan, Sask.
 Home Bank of Canada... ..Everett, O.
 Molsons Bank... ..Exeter, O.
 Canadian Bank of Commerce,
 Exeter, O.
 Bank of New Brunswick,
 Fairville, St. Johns Co., N.B.
 Eastern Townships Bank, Farnham, Q.
Banque d'Hochelaga,
 Farnham, Que.
 Banque de St. Hyacinthe,
 Farnham, Q.
Quebec Bank... ..Farnham, Q.
 Banque Nationale,
 Faubourg St. Jean, Q.
 Bank of British North America,
 Fenelon Falls, O.
 Bank of Montreal... ..Fenelon Falls, O.
 Union Bank of Canada... ..Fenwick, O.
 Imperial Bank of Canada,
 Fergus, Ont.
Traders' Bank of Canada,
 Fergus, O.
 Bank of Hamilton... ..Ferne, B.C.
Canadian Bank of Commerce,
 Ferne, B. C.
Home Bank of Canada..Ferne, B.C.
 Union Bank of Canada, Fillmore, Sask.
 Merchants Bank of Canada, Finch, O.
 Farmers Bank of Canada,
 Fingal, O.
 Standard Bank of Canada,
 Flesherton, O.
 Northern Crown Bank, Fleming, Sask.
 Northern Crown Bank, Florence, Ont.
 Northern Crown Bank,
 Foam Lake, Sask.
Imperial Bank of Canada,
 Fonthill, O.
 Bank of HamiltonFordwich, O.
 Canadian Bank of Commerce,
 Forest, Ont.

Standard Bank of Canada, Forest, O.
 Bank of Ottawa. ..Fort Coulongé, Q.
 Sterling Bank of Canada,
 Fort Erie, O.
Canadian Bank of Commerce,
 Fort Frances, O
 Union Bank of Canada,
 Fort Saskatchewan, Alta.
Bank of Montreal,
 Fort Willam, O.
Canadian Bank of Commerce,
 Fort William, O.
 Dominion Bank... ..Fort William, O.
Imperial Bank of Canada,
 Fort William, O.
 Merchants Bank of Canada,
 Fort William, O.
Northern Crown Bank,
 Fort William, O.
Traders' Bank of Canada,
 Fort William, O.
 Union Bank of Canada,
 Fort William, O.
 Bank of Hamilton... ..Francis, Sask.
 Union Bank of Canada..Frank, Alta.
Farmers Bank of Canada,
 Frankford, Ont.
 Molsons Bank... ..Frankford, O.
 Bank of Montreal... ..Fraserville, Q.
 Banque Nationale... ..Fraserville, Q.
 Molsons Bank... ..Fraserville, Q.
 Bank of British North America,
 Fredericton, N.B.
Bank of Montreal,Fredericton, N.B.
 Bank of Nova Scotia,
 Fredericton, N.B.
Bank of New Brunswick,
 Fredericton, N.B.
 Bank of Nova Scotia... .."
 Royal Bank of Canada, "
 Merchants Bank of Canada,
 Gainsborough, Sask.
Canadian Bank of Commerce,
 Galt, Ont.
Imperial Bank of Canada,
 Galt, Ont.
 Bank of Toronto... ..Galt, O.
 Merchants Bank of Canada,
 Galt, O
 United Empire Bank of Canada, "
 Galt, O.
Bank of Toronto,Gananoque, O.
Merchants' Bank of Canada,
 Gananoque, Ont.
Bank of Toronto... ..Gaspé, Q.
 Banque Provinciale au Canada,
 Gentilly, Que.
 Bank of Hamilton... ..Georgetown, O

BANKS AND THEIR AGENCIES.

Merchants Bank of Canada, Georgetown, O.	Bank of Montreal... Greenwood, B.C.
Canadian Bank of Commerce, Gilbert Plains, Man	Canadian Bank of Commerce, Greenwood, B.C.
Bank of Montreal... Glace Bay, N.S.	Dominion Bank ... Grenfell, Sask.
Union Bank of Halifax, Glace Bay, N.S.	Bank of Hamilton ... Grimsby, O.
Bank of Nova Scotia... Glace Bay, N.S.	Bank of Montreal... Grimsby, O.
Merchants Bank of Canada, Gladstone, Man	Merchants Bank of Canada, Griswold, Man.
Bank of Hamilton ...	Bank of Montreal ... Guelph, O.
Canadian Bank of Commerce, Gleichen, Alta	Canadian Bank of Commerce, Guelph, O.
Northern Crown Bank, Glenboro, Man.	Dominion Bank... Guelph, O.
Union Bank of Canada, Glenboro, Man.	Metropolitan Bank... Guelph, O.
Traders' Bank of Canada, Glencoe, O.	Royal Bank of Canada, Guelph, O.
Merchants' Bank of Canada, Glencoe, Ont.	Traders' Bank of Canada, Guelph, O.
Northern Crown Bank, Glen Ewen, Sask.	Royal Bank of Canada, Guysboro, N.S.
Bank of Montreal, ... Goderich, O.	Bank of Hamilton... Hagersville, O.
Sterling Bank of Canada, Goderich, O.	Bank of Ottawa... Haileybury, O.
Imperial Bank of Canada, Golden, B.C.	Union Bank of Canada, Haileybury, O.
Merchants Bank of Canada Gore Bay, O	Royal Bank of Canada, Halbrite, Sask.
Farmers' Bank of Canada, Gormley, Ont.	Sterling Bank of Canada, Haliburton, Ont.
Bank of Hamilton... Gorrie, Ont.	Bank of British North America, Halifax, N.S.
Northern Crown Bank, Govan, Sask.	Bank of Montreal, North End Branch, Halifax.
Standard Bank of Canada, Grafton, Ont.	Bank of Montreal... Halifax, N.S.
Bank of Montreal, Grand Falls, N.B.	Bank of Nova Scotia... "
Eastern Townships Bank, Grand Forks, B.C.	Canadian Bank of Commerce, Halifax, N.S.
Royal Bank of Canada ...	Royal Bank of Canada, Halifax, N.S.
Bank of New Brunswick, Grand Manan, N.B.	Royal Bank of Canada, South End, Halifax, N.S.
Bank of Montreal... Grand'Mere, Q.	Union Bank of Halifax, Head Office, Halifax, N.S.
Eastern Townships Bank, Granby, Q.	Union Bank of Halifax, North End Branch... Halifax, N.S.
Bank of Ottawa... "	Bank of New Brunswick, Halifax, N.S.
Banque Nationale, Grand River, Que.	Bank of British North America, Hamilton, O
Traders' Bank of Canada, Grand Valley, O	Bank of British North America, West- inghouse Ave... Hamilton, O.
Canadian Bank of Commerce, Grandview, Man.	Bank of British North America, Victoria ave., Hamilton, O.
Merchants Bank of Canada, Granton, O.	Bank of Hamilton Head Office, Hamilton, O.
Canadian Bank of Commerce, Granum, Alta.	<i>See adrt. p. 854 facing "The Bank Act."</i>
Dominion Bank ... Gravenhurst, O.	Bank of Hamilton, East End Branch Hamilton, O.
Bank of British North America, Greenwood, B.C.	Bank of Hamilton, Barton St. Branch Hamilton, O.
	Bank of Hamilton, Deering Br., Hamilton, O.

BANKS AND THEIR AGENCIES.

Bank of Hamilton, West End,
 Hamilton, Ont.
Bank of Montreal.. Hamilton, O.
Bank of Montreal, (Sherman Ave.)
 Hamilton, O.
Bank of Nova Scotia.. " "
Canadian Bank of Commerce,
 Hamilton, O.
Dominion Bank .. Hamilton, O.
Imperial Bank of Canada,
 Hamilton, O.
Merchants Bank of Canada,
 Hamilton, O.
Molsons Bank (James St.)
 Hamilton, O.
Molsons Bank (Market Branch),
 Hamilton, O.
Traders' Bank of Canada,
 East Hamilton, O.
Traders' Bank of Canada,
 Hamilton, O.
United Empire Bank of Canada,
 Hamilton, O.
United Empire Bank, Locke St.
 Hamilton, O.
Bank of Hamilton.. Hamiota, Man
Union Bank of Canada
 Hamiota, Man.
Northern Crown Bank, Hanley, Sask.
Merchants Bank of Canada,
 Hanover, O.
Royal Bank of Canada... Hanover, O.
Bank of Nova Scotia,
 Harbor Grace, Nfld
Canadian Bank of Commerce,
 Hardisty, Alta.
Bank of Nova Scotia,
 Harrietsville, O.
Standard Bank of Canada...
 Harriston, O.
Traders' Bank of Canada,
 Harriston, Ont.
Imperial Bank of Canada, Harrow, O.
Metropolitan Bank,
 Harrowsmith, Ont.
Bank of Montreal... Hartland, N.B.
Union Bank of Canada, Hartney, Man.
Bank of Toronto... Hastings, O.
Union Bank of Canada... Hastings, O.
Bank of Toronto... Havelock, O.
Bank of Ottawa... Hawkesbury, O.
Bank of British North America,
 Hedley, B.C.
Eastern Townships Bank,
 Hemmingford, O.
Molsons Bank... Hensall, O.
Traders' Bank of Canada,
 Hepworth, O.

Dominion Bank... Hespeler, O.
Merchants Bank of Canada,
 Hespeler, O.
Western Bank of Canada,
 Hickson, Ont.
Molson's Bank... Highgate, O.
Canadian Bank of Commerce,
 High River, Alta.
Northern Crown Bank,
 High River, Alta.
Union Bank of Canada,
 High River, Alta.
Union Bank of Canada,
 Hillsburg, Ont.
Northern Crown Bank,
 Hintonburgh, Ont.
Union Bank of Canada,
 Holland, Man
Bank of Montreal... Holstein, O.
Eastern Townships Bank, Howick, Q.
Bank of Montreal... Hull, Q.
Bank of Ottawa... Hull, Q.
Bank of Ottawa, Bridge St. Hull, Q.
Banque Provinciale du Canada,
 Hull, Q.
Canadian Bank of Commerce,
 Humboldt, Sask.
Union Bank of Canada,
 Humboldt, Sask.
Dominion Bank... Huntsville, O.
Eastern Townships Bank,
 Huntingdon, Que.
Banque de St. Hyacinthe,
 Iberville, Q.
Eastern Townships Bank, Iberville, Q.
Home Bank of Canada... Ilderton, O.
Bank of Montreal... Indian Head, Sask.
Union Bank of Canada,
 Indian Head, Sask.
Imperial Bank of Canada,
 Ingersoll, O.
Royal Bank of Canada,
 Ingersoll, O.
Merchants Bank of Canada,
 Ingersoll, O.
Traders' Bank of Canada,
 Ingersoll, O.
Northern Crown Bank, Inwood, Ont.
Northern Crown Bank,
 Inglewood, Ont.
Western Bank of Canada,
 Innerkip, Ont.
Canadian Bank of Commerce,
 Innisfail, Alta.
Union Bank of Canada, Innisfail, Alta.

BANKS AND THEIR AGENCIES.

Canadian Bank of Commerce	
Innisfræe, Alta.	
Quebec Bank.. . . .	Inverness, Que.
Union Bank of Halifax..	
	Inverness, N.S.
Northern Crown Bank,	Inwood, Ont.
Molsons Bank.. . . .	Iroquois, O.
United Empire Bank of Canada,	
	Islington, O.
Farmers Bank of Canada,	
	Janetville, Ont.
Bank of Hamilton.. . . .	Jarvis, O.
Bank of Ottawa.. . . .	Jasper, O.
Union Bank of Canada..	Jasper, O.
Banque Provinciale du Canada,	
	Jeunne Lorette, Q.
Banque d'Hochelaga..	Joliette, Q.
Banque Nationale.. . .	Joliette, Q.
Sterling Bank of Canada,	
	Jordon, Ont.
Bank of British North America,	
	Kalso, B.C.
Bank of Hamilton....	Kamloops, B.C.
Canadian Bank of Commerce,	
	Kamloops, B.C.
Imperial Bank of Canada,	
	Kamloops, B.C.
Canadian Bank of Commerce,	
	Kamsack, Sask.
Sterling Bank of Canada,	
	Kearney, Ont.
Bank of Toronto.. . . .	Keene, Ont.
Bank of Ottawa.. . . .	Keewatin, O.
Bank of Montreal.. . .	Kelowna, B.C.
Royal Bank of Canada,	
	Kelowna, B. C.
Bank of Ottawa.. . . .	Kemptville, O.
Union Bank of Canada,	
	Kemptville, O.
Royal Bank of Canada,	
	Kenilworth, Ont.
Bank of Ottawa.. . . .	Kenmore, Ont.
Bank of Ottawa.. . . .	Kenora, O.
Imperial Bank of Canada,	Kenora, O.
Traders' Bank of Canada,	
	Kenora, O.
Bank of New Brunswick,	
	Kensington, P.E.I.
Bank of Nova Scotia..	Kentville, N.S.
Union Bank of Halifax,	Kentville, N.S.
Eastern Townships Bank,	
	Keremeos, B.C.
Bank of Nova Scotia,	Kentville, N.S.
Union Bank of Halifax,	Kentville, N.S.
Bank of Hamilton,	Kenton, Man.
Farmers' Bank of Canada,	
	Kerwood, Ont.
Sterling Bank of Canada,	
	Kilalloe,
Bank of Hamilton ..	Killarney, Man.
Union Bank of Canada,	
	Killarney, Man
Union Bank of Canada,..	Kinburn, O.
Merchants Bank of Canada,	
	Kincardine, O.
Traders' Bank of Canada,	
	Kincardine, O.
Bank of Montreal. . . .	King City, O.
Bank of British North America,	
	Kingston, O.
Bank of Montreal.. . .	
	Kingston, O.
Canadian Bank of Commerce,	
Northern Crown Bank,	
	Kingston, O.
Merchants Bank of Canada,	
	Kingston, Ont.
Standard Bank of Canada,	
	Kingston, O.
Molsons Bank.. . . .	Kingsville, O.
Union Bank of Canada,	Kingsville, O.
Farmers Bank of Canada,	
	Kinmount, O.
Sterling Bank of Canada,	Kirkfield.
Northern Crown Bank,	
	Kleinburg, Ont.
Molsons Bank.. . . .	Knowlton, Q.
Eastern Townships Bank,	
	Knowlton, Q.
Banque Provinciale du Canada,	
	Lachine, Que.
Merchants' Bank of Canada,	
	Lachine, Q.
Molson's Bank.. . . .	Lachine, Que.
Bank of Ottawa.. . . .	Lachute, Q.
Eastern Townships Bank,	Lacolle, Q.
Merchants Bank of Canada,	
	Lacombe, Alberta.
Union Bank of Canada,	Lacombe, Alta.
Royal Bank of Canada,	
	Ladner, B. C.
Canadian Bank of Commerce,	
	Ladysmith, B.C.
Traders' Bank of Canada,	
	Lakefield
Bank of Montreal, Lake Megantic,	Q.
Farmer's Bank of Canada,	
	Lakeside, Q.
Eastern Townships Bank,	
	Lake Megantic, Q.
Bank of Ottawa.. . . .	Lanark, O.
Merchants' Bank of Canada,	
	Lancaster, O.

BANKS AND THEIR AGENCIES.

Union Bank of Canada,	N.-D. de Quebec... ..Levis, Q.
Langdon, Alta.	Bank of Montreal... ..Lindsay, O.
Canadian Bank of Commerce,	Canadian Bank of Commerce,
Langham, Sask.	Lindsay, Ont.
Northern Crown Bank,	Farmers' Bank of Canada,
Langham, Sask.	Lindsay, O.
Bank of Toronto. Langenburg, Sask.	Dominion Bank,Lindsay, O.
Canadian Bank of Commerce,	Standard Bank of Canada,
Lanigan, Sask.	Lindsay, Ont.
Union Bank of Canada,	Dominion Bank... ..Linwood, O.
Lanigan, Sask.	Traders' Bank of Canada,
Merchants Bank of Canada,	Lion's Head, O.
Lansdowne, Ont.	Royal Bank of Canada, Lipton, Sask.
Banque d'Hochelaga, Laprairie, Que.	Banque Nationale... ..L'Islet, Q.
Bank of Hamilton,	Bank of Hamilton... ..Listowel, O.
La Riviere, Man.	Imperial Bank of Canada, "
Banque d'Hochelaga,	Western Bank of Canada,
L'Assomption, Q.	Little Britain, Ont.
Banque de St. Hyacinthe,	Merchants' Bank of Canada,
L'Assomption, Q.	Little Current, O.
Canadian Bank of Commerce,	Bank of Nova Scotia, Liverpool, N.S.
Lashburn, Sask.	Union Bank of Halifax, "
Canadian Bank of Commerce,	Canadian Bank of Commerce,
Latchford, Ont.	Lloydminster, Sask.
Royal Bank of Canada..Lauder, Man.	Northern Crown Bank,
Union Bank of Halifax,	Lloydminster, Sask.
Laurencetown, N.S.	Union Bank of Halifax... ..
Eastern Townships Bank,	Lockeport, N.S.
Lawrenceville, O.	Bank of British North America,
Home Bank of Canada,	London, Ont.
Lawrence Station, Ont.	Bank of British North America, Ham-
Merchants' Bank of Canada,	ilton Road... ..London, O.
Leamington, O.	Bank of British North America,
Traders' Bank of Canada,	Market Sq. (Sub. Branch),
Leamington, Ont.	London, O.
Union Bank of Canada,	Bank of Montreal.... ..London, O.
Leamington, Ont.	Bank of Toronto... .."
Merchants Bank of Canada,	Bank of Toronto, London East,
Leduc, Alta.	London, O.
Sterling Bank of Canada, Lefroy, Ont.	Bank of Toronto, London North,
Union Bank of Canada	London, O.
Lemberg, Sask.	Bank of Nova Scotia... ..London, O.
Eastern Townships Bank,	Canadian Bank of Commerce,
Lennoxville, Q.	London, O.
Bank of Ottawa... ..Lenore, Man.	Dominion Bank,"
Banque Provinciale du Canada,	Imperial Bank of Canada,
L'Epiphanie, Q.	London, O.
Bank of Montreal.. Lethbridge, Alta.	Merchants Bank of Canada, London, O.
Molson's Bank... ..Lethbridge, Alta.	Home Bank of Canada..London, O.
Union Bank of Canada, "	Molson's Bank... ..London, O.
Canadian Bank of Commerce,	Bank of Toronto... ..London East, O.
Lethbridge, Alta.	Bank of Toronto ..London North, O.
Merchants' Bank of Canada,	Royal Bank of Canada,
Lethbridge, Alta.	Londonderry, N.S.
Bank of British North America,	Bank of British North America,
Levis, Q.	Longueuil, Q.
Bank of Montreal... Levis, Q.	Sterling Bank of Canada,
Banque Nationale... Levis, Q.	L'Original, Q.
La Caisse d'Economie de	

BANKS AND THEIR AGENCIES.

Royal Bank of Canada,

Louisburg, N.S.
Banque d'Hochelaga, Louiseville, Q.
Merchants Bank of Canada, Lucan, O.
Standard Bank of Canada, "
Bank of Hamilton . . . Lucknow O.
Molsons Bank. . . . Lucknow, O.
Union Bank of Canada,

Lumsden, Sask.
Bank of Montreal..Lunenburg, N.S.
Royal Bk of Canada, Lunenburg, N.S.
Union Bank of Halifax,

Lunenburg, N. S.
Home Bank Lyleton, Sask.
Union Bank of Halifax, Mabou, N.S.
Merchants Bank of Canada,

Macgregor, Man.
Canadian Bank of Commerce,

Macleod, Alta.
Northern Crown Bank, Macleod, Alta.
Union Bank of Canada, Macleod, Alta.
Northern Crown Bank, Macoun, Sask.
Dominion Bank.. . . . Madoc, Ont.
Eastern Townships Bank ..Magog, Q.

Bank of Montreal.

Magrath, Alta.
Bank of Montreal, Mahone Bay, N.S.
Bank of Toronto, Maisonneuve, Que.
Molsons Bank . . . Maisonneuve, Q.
Banque d'Hochelaga,

Maisonneuve, Q.
Royal Bank of Canada, Maitland, N.S.
Northern Crown Bank,

Mallorytown, Ont.
Bank of Hamilton .. Manitou, Man.
Union Bank of Canada, Manitou, Man.
Bank of Ottawa Maniwaki, "
Northern Crown Bank, Manor, Sask.
Union Bank of Canada, Manotick, O.
Easter Townships Bank,

Mansonville, Que.
Standard Bank of Canada, Maple, O.
Sterling Bank of Canada, Maple, O.
Merchants Bank of Canada,

Maple Creek, Sask.
Union Bank of Canada,

Maple Creek, Sask.
Eastern Townships Bank,

Marbleton, Q.
Eastern Townships Bank,

Marieville, Q.
Merchants Bank of Canada,

Markdale, O.
Metropolitan Bank.. . Markham, O.
Standard Bank of Canada.

Markham, O.
Dominion Bank. Marmora, O.

Bank of Ottawa. . . Martintown, O.
Bank of Montreal .. Marysville, N.B.

Traders' Bank of Canada,

Massey, O.
Banque Nationale.. . Matane, Que.
Bank of Hamilton, Mather, Man.
Bank of Ottawa... . Mattawa, Ont.
Bank of Ottawa Maxville, O.
Metropolitan Bank... Maynooth, Ont.
Merchants Bank of Canada

Meaford, Ont.
Molsons Bank.. . . . Meaford, O.
Bank of Montreal, Medicine Hat, Alta.
Canadian Bank of Commerce,

Medicine Hat, Alta.
Merchants Bank of Canada,

Medicine Hat, Alta.
Union Bank of Canada,

Medicine Hat, Alta.
Bank of Montreal, ..Megantic, Que.

Home Bank of Canada, Melbourne, O.
Union Bank of Canada, Melbourne, O.

Northern Crown Ban..Melita, Man.
Union Bank of Canada, Melita, Man.

Bank of Hamilton...Melfort, Sask.
Canadian Bank of Commerce,

Melfort, Sask.
Canadian Bank of Commerce,

Melville. O.
Merchants' Bank of Canada,

Melville, O.
Molsons Bank.. . . . Merlin O.

Union Bank of Canada,

Merrickville, O.
Union Bank of Canada..Metcalfe, O.

Bank of Hamilton .. Miami, Man
Imperial Bank of Canada, Michel, O.

Canadian Bank of Commerce,
Middleton, N.S.

Union Bank of Halifax.
Middleton, N.S.

Bank of British North America,
Midland. O

Bank of Hamilton... . Midland. O
Western Bank of Canada, "

Midland, O.
Eastern Townships Bank, Midway, B.C.

Merchants Bank of Canada,
Mildmay, O.

Farmers' Bank of Canada.
Bank of Montreal.. . Millbrook, O.

Bank of Toronto Millbrook, O
Sterling Bank of Canada,

Mille Roches, O.
Bank of Hamilton... . Milton, O.

Farmers Bank of Canada...Milton, O.
Metropolitan Bank.. . . . "

Bank of Hamilton, Milverton, O.
Metropolitan Bank.. . Milverton, O.

Northern Crown Bank..Miniota, Man.

BANKS AND THEIR AGENCIES.

Bank of Hamilton .. Minnedosa, Man
 Union Bank of Canada,
 Minnedosa, Man
 Union Bank of Canada... Minto, Man.
 Canadian Bank of Commerce,
 Mission City, B.C.
 Bank of Hamilton... Mitchell, O
 Merchants Bank of Canada,
 Mitchell, O.
Canadian Bank of Commerce,
 Monarch, Alta.
Bank of Montreal... Moncton, N.B.
 Bank of New Brunswick,
 Moncton, N. B.
 Bank of Nova Scotia...
 Moncton, N. B.
 Royal Bank of Canada, Moncton, N.B.
 Sterling Bank... Moncton, Ont.
 Canadian Bank of Commerce,
 Montague, P.E.I
 Banque Nationale... Montmagny, Q.
 Quebec Bank... Montmagny, Que.
Bank of British North America,
 Head Office, Montreal.
Bank of British North America,
 365 St. Catherine W.
Bank of Montreal,
 Head Office... Montreal, Que.
 See adv. p. 5.
Bank of Montreal, West End Br.,
 430 St. Catherine W.,
 Bank of Montreal, 261 Peel
Bank of Montreal,
 Branch,
 Bank of Montreal, 924 Notre
 Dame W., Seigneurs St. Br.
Bank of Montreal 934 St. Cath-
 erine E., Papineau Ave..
 Bank of Montreal, 604 Wellington
 Point St. Charles Br.
Bank of Montreal,
 St. Henri Ward
 Bank of Montreal, Westmount Branch,
 299 Green Av..
Bank of Nova Scotia...
Bank of Ottawa...
Bank of Toronto,
 262 St. James..
 Bank of Toronto, 121 St.
 Etienne, Pt. St. Charles..
 Bank of Toronto, 777 St.
 Catherine West..
 Bank of Toronto, Board of
 Trade ..
 Banque d'Hochelaga,
 Head Office..
Banque d'Hochelaga,
 711 St. Catherine East ..

Banque d'Hochelaga,
 1671 St. Catherine East.. Montreal
Banque d'Hochelaga, 1835
 Notre Dame West ..
 Banque d'Hochelaga, (Mile End Br.)
Banque d'Hochelaga,
 272 St. Catherine E., Br.
 Banque d'Hochelaga,
 629 Notre Dame W. Br. "
Banque d'Hochelaga,
 1950 St. James, St. Henri
 Ward Br... "
 Banque d'Hochelaga, 210 Cen-
 tre Point St Charles.... "
Banque d'Hochelaga,
 Mount Royal Av., cor.
 St. Denis... "
Banque Nationale, cor. St.
 James and Place d'Armes
 hill... "
Banque Provinciale du Canada,
 Head Office... "
 Banque Provinciale du Cana-
 da, rue Beaubien... "
 Banque Provinciale du Canada
 849 Notre Dame West... "
 Banque Provinciale du Canada,
 1333 Notre Dame West "
 Banque Provinciale du Canada
 316 Rachel... "
 Banque Provinciale du Cana-
 da, 103 Roy... "
 Banque Provinciale du Cana-
 da, Eastern Abattoirs, 742
 Ontario East... "
Canadian Bank of Commerce,
 Montreal
 See advt. p. 4.
Canadian Bank of Commerce,
 (Delormier Br.)... "
Canadian Bank of Commerce,
 Montreal
 460 St. Catherine West "
 City and District Savings Bank
 Head Office 176 St. James.. "
 City and District Savings Bank
 504 St. Catherine St. East.. "
 City and District Savings Bank
 381 St. Catherine St. West "
 City and District Savings Bank
 1398 Notre Dame Street East "
City and District Savings Bank,
 750 Notre Dame Street West
 Branch... Montreal
 City and District Savings Bank
 Point St. Charles Branch cor.
 Centre, Conde and Grand
 Trunk Streets... "

BANKS AND THEIR AGENCIES.

City and District Savings Bank, 946 St. Denis... ..Montreal	Royal Bank of Canada, Montreal
City and District Savings Bank cor Ontario and Maisonneuve... .. "	St. Catherine West Branch.. "
City and District Savings Bank, 962 St. Lawrence... ..Montreal	Royal Bank of Canada West End Branch... .. "
City and District Savings Bank 2010 St. James... .. "	Royal Bank of Canada, St. Paul St... .. "
City and District Savings Bank 1505 St. James... .. "	Royal Bank of Canada Mont- treal Annex... .. "
Dominion Bank... "	Sterling Bank of Canada, "
Dominion Bank, Bleury St. "	Union Bank of Canada, "
Eastern Townships Bank, 183 St. James St. "	Union Bank of Canada, Dalhousie Station Montreal
Eastern Townships Bank, St. Catherine East Branch	Bank of Hamilton, Moorefield, Ont.
Eastern Townships Bank, St. Catherine St. West Br. "	Bank of Ottawa... Moose Creek, O.
Imperial Bank of Canada, St. James, cor. McGill... .. "	Royal Bank of Canada, Moose Jaw, Sask.
Merchants' Bank of Canada, Montreal Br. "	Northern Crown Bank, Moose Jaw, Sask.
Merchants' Bank of Canada, Head Office. <i>See advt. p. 3.</i> "	Union Bank of Canada, Moose Jaw, Sask.
Merchants' Bank of Canada, 320 St. Catherine St. West	Bank of Hamilton... "
Merchants Bank of Canada, 1255 St. Catherine St. E... .. "	Canadian Bank of Commerce, Moose Jaw, Sask.
Merchants' Bank of Canada, 1330 St. Lawrence Blvd., "	Canadian Bank of Commerce, Moosomin, Sask.
Molsons Bank, Head Office. <i>See advt. p. 2.</i> "	Union Bank of Canada, Moosomin, Sask.
Molsons Bank, St. James St.	Bank of Hamilton... Morden, Man.
Molsons Bank, Maisonneuve Br., "	Union Bank of Canada, Morden, Man.
Molsons Bank, 525 St. Catherine St. West... .. "	Merchants Bank of Canada, ..Morris Man
Molsons Bank, 4073 Notre Dame, St. Henri Ward Br. "	Molsons Bank... ..Morrisburg, O.
Molson's Bank, Market and Harbour Br., 212 St. Paul.	Bank of Ottawa Morrisburg, O.
Quebec Bank, Place d'Armes "	Bank of Hamilton, Mortlack, Sask.
Quebec Bank, St. Henri Ward "	Sterling Bank of Canada, Mountain, Ont.
Quebec Bank, 560 St. Catherine St. East. "	Farmers' Bank of Canada, Mountain Grove, O.
Royal Bank of Canada, Head Office, St. James St. <i>See advt. p. 854 opp. The Bank Act</i> "	Dominion Bank... ..Mount Albert, O.
Royal Bank of Canada, Main Office, "	Union Bank of Canada, Mount Brydges, O.
Royal Bank of Canada, Notre Dame West Branch	Bank of Montreal... ..Mt. Forest, O.
	Traders' Bank of Canada, Mount Forest, O.
	Banque Nationale... Murray Bay, Q.
	Canadian Bank of Commerce, Nanaimo, R C
	Royal Bank of Canada... "
	Bank of Hamilton... ..Nanton, Alta.
	Canadian Bank of Commerce Nanton, Alta
	Northern Crown Bank, Nanapsee, Ont.
	Dominion Bank... .. "
	Napapsee, O.
	Merchants Bank of Canada, Napapsee, O.

BANKS AND THEIR AGENCIES.

Canadian Bank of Commerce,
Neepawa, Man.
Merchants Bank of Canada,
Napinka, Man.
Merchants Bank of Canada,
Neepawa, Man.
Union Bank of Canada
Canadian Bank of Commerce,
Neelson, B.C.
Bank of Montreal... Nelson, B.C.
Imperial Bank of Canada, "
Royal Bank of Canada... Nelson, B.C.
Farmers Bank of Canada,
Nestleton, O.
Bank of Hamilton, Neustadt, Ont.
Union Bank of Canada... Newboro, O.
Banque Nationale,
New Carlisle, Que.
Bank of Nova Scotia, Newcastle, N.B.
Royal Bank of Canada, "
Standard Bank of Canada,
Newcastle, O.
Traders' Bank of Canada,
Newcastle, O.
Bank of Montreal... New Denver, B.C.
Dominion Bank... New Dundee, O.
Bank of Nova Scotia,
New Glasgow, N.S.
Canadian Bank of Commerce,
New Glasgow, N.S.
Union Bank of Halifax,
New Glasgow, N.S.
Bank of Hamilton, New Hamburg, O.
Western Bank of Canada,
New Hamburg
Sterling Bank of Canada,
Newington, O.
Union Bank of Canada,
New Liskeard, O
Imperial Bank of Canada,
New Liskeard, Ont.
Bank of Toronto... Newmarket, O.
Bank of Montreal... Newmarket, O.
Bank of Nova Scotia,
New Richmond, Que.
Farmers' Bank... Newton, Ont.
Standard Bank of Canada,
Newtonville, O.
Farmers' Bank... New Toronto, Ont.
Bank of Montreal,
New Westminster, B.C.
Canadian Bank of Commerce,
New Westminster, B.C.
Northern Crown Bank,
New Westminster, B.C.
Royal Bank of Canada,
New Westminster, B.C.
Bank of Hamilton, Niagara Falls, O.
Imperial Bank of Canada,
Niagara Falls, O.

Royal Bank of Canada,
Niagara Falls, O.
Imperial Bank of Canada,
Niagara Falls, (Upper Bridge) O.
Royal Bank of Canada,
Niagara Falls Centre, O.
Bank of Hamilton,
Niagara Falls South, O.
Bank of Montreal,... Nicola, B.C.
La Banque Nationale... Nicolet, Q.
Union Bank of Canada, Ninga, Man.
Northern Crown Bank Nokomis, Sask.
Canadian Bank of Commerce,
Nokomis, Sask.
Metropolitan Bank,
North Augusta, O
Bank of British North America,
North Battleford, Sask.
Canadian Bank of Commerce,
North Battleford, Sask.
Imperial Bank of Canada,
North Battleford, Sask.
Bank of Ottawa... North Bay, O
Imperial Bank of Canada, "
Traders' Bank of Canada,
North Bay, O.
Union Bank of Canada,
North Gower, O.
Eastern Townships Bank,
North Hatley, Q.
Bank of Nova Scotia,
North Sydney, C.B.
Union Bank of Halifax,
North Sydney, N.S.
Bank of British North America,
North Vancouver, B.C.
Farmers Bank of Canada,
Norval, O.
Molsons Bank, North Williamsburg, O.
Molsons Bank... Norwich, O.
Traders' Bank of Canada,
Norwich, O.
Union Bank of Canada, Norwood, O.
Merchants Bank of Canada,
Oak Lake, Man
Bank of Montreal... Oakville, Man.
Bank of Toronto... Oakville, O
Merchants Bank of Canada,
Oakville, O
Bank of British North America
Oak River, Man.
Bank of Toronto,... Oil Springs, O.
Merchants' Bank of Canada,
Okotoks, Alta.
Union Bank of Canada,
Okotoks, Alta.
Northern Crown Bank... Odessa, O.
Merchants Bank of Canada,
Olds, Alta.

BANKS AND THEIR AGENCIES.

Bank of New Brunswick, O'Leary, P.E.I.	Royal Bank of Canada... ..Ottawa
Bank of Toronto... ..Omamee, O	Royal Bank of Canada, Bank St. "
Bank of Hamilton... ..Orangeville, O.	Royal Bank of Canada, Market Branch... .. "
Canadian Bank of Commerce, Orangeville, O.	Traders Bank of Canada.
Sterling Bank of Canada, Orangeville, O.	Union Bank of Canada,
Dominion Bank...Orillia, O.	Standard Bank of Canada,
Merchants Bank of Canada, Orillia, O.	Dalhousie St. "
Traders' Bank of Canada,	Union Bank of Canada, (Market Branch)... .. "
Eastern Townships Bank, Orms town, Q	Traders' Bank of Canada, Otterville, O.
Standard Bank of Canada ..Orono, O	Canadian Bank of Commerce, Outlook, Sask.
Union Bank of Canada, Osgoode, Station, O.	Union Bank of Canada, Outlook, Sask.
Dominion Bank... ..Oshawa, O	Bank of Hamilton, Owen Sound, O.
Royal Bank of Canada, Oshawa, Ont.	Merchants Bank of Canada, Owen Sound, O
Western Bank of Canada, Head Office, Oshawa	Molsons Bank... ..Owen Sound, O.
Stirling Bank of Canada, Osnabruck Centre, Ont.	Traders' Bank of Canada, Owen Sound, O.
Bank of British North Amer- ica... ..Ottawa, O	Union Bank of Canada, Oxbow, Sask.
Bank of Montreal... "	Merchants Bank of Canada, Oxbow, Sask.
Bank of Montreal, Sub br. "	Bank of Nova Scotia... ..Oxford, N.S.
Bank of Nova Scotia...	Traders' Bank of Canada, Paisley, O.
Bank of Ottawa, Head Office... .. "	Western Bank of Canada, Paisley, O.
Bank of Ottawa, Bank St. Branch... .. "	Union Bank of Canada, Pakenham, O.
Bank of Ottawa, Rideau St. Branch... .. "	Bank of Hamilton, Palmerston, O
Bank of Ottawa, Somerset st "	Sterling Bank of Canada, Palmerston, Ont.
Bank of Ottawa .. Lloyd St., Ottawa	Farmers' Bank of Canada, Parham, O.
Bank of Ottawa, Bank St. and Gladstone av... .. "	Bank of Montreal...Paris, O.
Bank of Ottawa, Bank St. and 4th Av... .. "	Canadian Bank of Commerce, Paris, O
Banque Nationale... .. "	Merchants' Bank of Canada, Parkdale, O
Canadian Bank of Commerce, Ottawa, O.	Metropolitan Bank, ..Parkdale, O.
Canadian Bank of Commerce, Bank St. Ottawa	Sterling Bank of Canada, Parkdale, O.
Northern Crown Bank, Rideau Street... .. Ottawa, O.	Canadian Bank of Commerce, Park Hill, O
Northern Crown Bank, Sparks st	Standard Bank of Canada, Park Hill, O.
Dominion Bank... "	Bank of Nova Scotia, Parrsboro, N.S.
Imperial Bank of Canada, Ottawa, O.	Canadian Bank of Commerce, Parrsboro, N.S.
Imperial Bank of Canada Bank St... .. "	Union Bank of Halifax, "
Merchants Bank of Canada, Ottawa, O.	Bank of Ottawa... ..Parry Sound, O
Molsons Bank "	Bank of Toronto... ..Parry Sound, O.
Quebec Bank "	Canadian Bank of Commerce, Parry Sound, O.
	Bank of Nova Scotia, Paspebiac, Q.
	Western Bank of Canada, Pefferlaw, O.

BANKS AND THEIR AGENCIES.

Bank of Ottawa	Pembroke, O.	Royal Bank of Canada,	
Quebec Bank	"		Plumas, Man.
Royal Bank of Canada,		Canadian Bank of Commerce,	
Western Bank of Canada,			Ponoka, Alta.
	Penetanguishene, O.	Farmers Bank of Canada,	
Union Bank of Canada, Pense, Sask.			Pontypool, O.
Canadian Bank of Commerce,		Canadian Bank of Commerce,	
	Penticton, B.C.		Port Arthur, O.
Union Bank of Canada,		Molson's Bank	
	Perdue, Sask.		Port Arthur, O.
Bank of Montreal	Perth, O.	Bank of Montreal,	Port Arthur, O.
Merchants Bank of Canada.		Imperial Bank of Canada,	
	Perth, O.		Port Arthur, O.
Bank of Ottawa	Perth, O.	Sterling Bank of Canada,	
Bank of Ottawa	Peterborough, O.		Port Burwell, O.
Bank of Ottawa (South Br.),		Imperial Bank of Canada,	
	Peterborough, O.		Pt. Colborne, O.
Bank of Nova Scotia (Peterboro', O.)		Sterling Bank of Canada,	
Bank of Toronto	Peterboro, O.		Port Credit, O.
Bank of Montreal	Peterboro, O.	Sterling Bank of Canada,	
Dominion Bank,	Peterborough, Ont.		Port Dalhousie, O.
Royal Bank of Canada,		Northern Crown Bank,	
	Peterborough, Ont.		Pt. Dover, O.
Canadian Bank of Commerce,		Bank of Hamilton	Port Elgin, O.
	Peterborough O.	Metropolitan Bank	Port Elgin, O.
Bank of Toronto	Petrolia, O.	Bank of Nova Scotia, Port Elgin, N.B.	
Metropolitan Bank	"	Royal Bank of Canada,	
Eastern Townships Bank,			Port Essington, B.C.
	Philipsburg, Que.	Royal Bank of Canada,	
Farmers' Bank of Canada,			Port Hawkesbury, N.S.
	Philipsville, O.	Bank of Hamilton, Port Hammond, B.C.	
Eastern Townships Bank,		Bank of Montreal, Port Hood, N.S.	
	Phoenix, B.C.	Traders' Bank of Canada,	
Western Bank of Canada,			Port Hope, Ont.
	Pickering, O.	Bank of Montreal,	Port Hope, O.
Bank of Montreal	Pictou, O.	Bank of Toronto	Port Hope, O.
Metropolitan Bank	"	Union Bank of Canada, Portland, O.	
Standard Bank of Canada. "		Royal Bank of Canada,	
United Empire Bank of Canada,			Port Moody, B.C.
	Pictou, Ont.	Canadian Bank of Commerce,	
Bank of Nova Scotia	Pictou, N.S.		Port Perry, O.
Royal Bank of Canada, Pictou, N.S.		Western Bank of Canada,	
Banque Provinciale du Canada,			Port Perry, O.
	Pierreville, Q.	Bank of Hamilton	Port Rowan, O.
Northern Crown Bank, Pierson, Man.		Sterling Bank of Canada,	
Bank of Hamilton, Pilot Mound, Man.			Port Stanley, O.
Bank of Toronto, Pilot Mound, Man.		Bank of Montreal,	
Canadian Bank of Commerce,			Portage La Prairie, Man.
	Pincher Creek, Alta.	Bank of Ottawa,	
Union Bank of Canada,			Portage la Prairie, Man.
	Pincher Creek, Alta.	Bank of Toronto,	
Northern Crown Bank.			Portage La Prairie, Man.
	Pipestone, Man.	Canadian Bank of Commerce,	
Union Bank of Canada,			Portage la Prairie, Man.
	Plantagenet, O.	Imperial Bank of Canada,	
Western Bank of Canada,			Portage la Prairie, Man.
	Plattsville, O.	Merchants' Bank of Canada,	
Banque Nationale	Plessisville, Q.		Portage la Prairie, Man.

BANKS AND THEIR AGENCIES.

Farmers Bank of Canada,
 Shannonville, O.
 Farmers' Bank of Canada,
 Sharbot Lake, O.
 Quebec Bank. Shawinigan Falls, Que.
 Banque Nationale, Shawinigan Fall, Q.
 Merchants Bank of Canada,
 Shawville, Q.
 Bank of Montreal... ..Shediac, N.B.
 Sterling Bank of Canada,
 Shedden, O.
 Northern Crown Bank, Sheho, Sask.
 Bank of Toronto... ..Shelburne, N.S.
 Canadian Bank of Commerce,
 Shelburne, N.S.
 Union Bank of Canada, Shelburne, O.
Bank of Montreal ..Sherbrooke, Q.
Banque d'Hochelaga,
 Sherbrooke, Q.
Banque Nationale,
 Sherbrooke, Q.
Eastern Townships Bank,
 Head Office Sherbrooke, Q.
 Eastern Townships Bank,
 Br. Office Wellington St.... "
 Merchants Bank of Canada.. "
 Union Bank of Halifax,
 Sherbrooke, N.S.
 Union Bank of Canada,
 Shoal Lake, Man
 Royal Bank of Canada,
 Shubenacadie, N.S.
Bank of Hamilton... ..
 Simcoe, O.
Canadian Bank of Commerce,
 Simcoe, O.
 Molsons Bank... ..Simcoe, O.
 Union Bank of Canada,
 Sintaluta, Sask.
 Molsons Bank... ..Smith's Falls, O.
 Bank of Ottawa... .."
 Union Bank of Canada Smith's Falls, O.
 Union Bank of Canada Smithville, O.
 Sterling Bank of Canada..Sombra, O.
 Northern Crown Bank,
 Somerset, Man.
 Bank of Hamilton ..Snowflake, Man.
 Banque d'Hochelaga.Sorel, Q.
 Molsons Bank... ..Sorel, Q.
 Merchants Bank of Canada,
 Souris, Man
 Union Bank of Canada, Souris, Man.
 Canadian Bank of Commerce,
 Souris, P.E.I.
 Farmers' Bank of Canada
 Southampton, Ont.
 Bank of Hamilton, Southampton, O

Royal Bank of Canada,
 South River, O.
 Sterling Bank of CanadaSparta
 Northern Crown Bank, Sperling, Man.
 Farmers' Bank of Canada,
 Spring Brook, O.
Traders' Bank of Canada,
 Springfield, O.
 Bank of Nova Scotia, Springhill, N.S.
 Union Bank of Halifax,
 Springhill, N.S.
 Canadian Bank of Commerce,
 Springhill, N.S.
 Merchants' Bank of Canada,
 Ste Agathe des Monts, Que.
 Banque Nationale,
 St. Anne de la Pocatiere.
 Banque Nationale... ..St. Aime, Q.
 Bank of Hamilton, St. Albert, Alta.
 Banque Provinciale du Canada,
 St. Anselme, Q.
 Bank of Nova Scotia... ..
 St. Andrews, N.B.
 Bank of Ottawa, St. Andrews, Que.
 Eastern Townships Bank,
 St. Armand, Que.
Banque d'Hochelaga,
 St. Boniface, Man
Northern Crown Bank,
 St. Boniface, Man.
 Banque Nationale...St. Casimir, Q.
 Bank of Nova Scotia,
 St. Catharines, Ont.
Bank of Toronto, St. Catharines, O.
 Canadian Bank of Commerce
 St. Catharines, O
Imperial Bank of Canada,
 St. Catharines, O.
 Sterling Bank of Canada, "
 St. Jovite, Q.
Traders' Bank of Canada,
 St. Catharines, O.
 Banque de St. Hyacinthe,
 St. Cesaire, Q.
 Molsons Bank... ..St. Cesaire, Q.
 Banque Nationale,
 St. Charles (Bellechasse) Q.
 Eastern Townships Bank,
 St. Chrysostome, Q.
 Western Bank of Canada,
 St. Clements, O.
 Banque Provinciale, St. Croix, Q.
 Banque Provinciale du Canada,
 St. Denis River, Richelieu.
 Banque Nationale,
 St. Evariste Station, Que.
 Banque Provinciale du Canada,
 St. Eustache, Q.

BANKS AND THEIR AGENCIES.

Eastern Townships Bank,
 St. Felix de Valois, Q.
 Eastern Townships Bank,
 St. Ferdinand d'Halifax, Q.
 Molsons Bank, St. Flavie Station, Q.
 Banque Provinciale du Canada,
 St. Flavien, Q.
 Banque Nationale,
 St. Francois du Lac, Q.
 Eastern Townships Bank,
 St. Gabriel de Brandon, Q.
Merchants' Bank of Canada,
 St. George, O.
 Eastern Townships Bank,
 St. George, Beauce, Q.
 Quebec Bank, St. George Beauce, Q.
 Bank of Nova Scotia... ..
 St. George, N.B.
 Banque Provinciale du Canada,
 St. Gertrude, Que.
 Banque Provinciale du Canada,
 St. Guillaume d'Upton, Q.
Eastern Townships Bank,
 St. Hyacinthe, Q.
 Banque de St. Hyacinthe,
 St. Hyacinthe, Q.
Banque d'Hochelaga,
 St. Hyacinthe, Q.
Banque Nationale,
 St. Hyacinthe, Q.
 Bank of Nova Scotia, St. Jacobs, Ont.
 Banque d'Hochelaga St. Jacques Co.
 Montcalm, Q.
 Banque Provinciale,
 St. Jean, Port Joli, Q.
 Merchants Bank of Canada,
 St. Jerome, Q.
 Banque d'Hochelaga... ..
 St. Jerome, Q.
 Bank of British North America,
 Union St. St. John, N.B.
 Bank of British North America,
 St. John, N.B.
 Bank of Montreal... ..
 St. John, N.B.
Bank of New Brunswick,
 Head Office... ..
 St. John, N.B.
 Bank of New Brunswick,
 North End Branch... ..
 " "
 Bank of New Brunswick, West
 End... ..
 " "
 Bank of Nova Scotia,
 " "
 Bank of Nova Scotia,
 Charlotte St.
 " "
Bank of New Brunswick,
 North End Br.
 " "
Bank of New Brunswick,
 Market Br., St. John, N.B.
Canadian Bank of Commerce,
 St. John, N.B.

Royal Bank of Canada,
 St. John, N.B.
Royal Bank of Canada,
 North End, "
 Union Bank of Halifax, St. John, N.B.
Bank of Montreal, St. John's, Nfld.
 Bank of Nova Scotia... ..
 " "
 Newfoundland Savings Bank,
 St. John's, Nfld.
Royal Bank of Canada,
 " "
 Banque de St. Jean, Head Office,
 St. Johns, Q.
 Banque Nationale... ..
 St. Johns, Q.
 Eastern Townships Bank, St. Johns, Q.
 Merchants Bank of Canada,
 St. Johns, Q.
 Eastern Townships Bank,
 St. Joseph, Beauce, Q.
 Merchants Bank of Canada,
 St. Lambert, Q.
 Bank of Toronto... ..
 Banque Nationale,
 Ste. Marie de la Beauce, Q.
 Bank of Montreal... ..
 St. Mary's, O.
 Bank of Nova Scotia... ..
 St. Mary's N.B.
Traders' Bank of Canada,
 St. Mary's, N.B.
 Molsons Bank... ..
 St. Ours, Que.
 Banque National... ..
 St. Pascal, Que.
 Banque Provinciale du Canada,
 St. Pascal, Que.
Royal Bank of Canada,
 St. Paul, Que.
 Union Bank of Halifax,
 St. Peters, C.B.
Banque d'Hochelaga,
 St. Pierre, Man.
 Union Bank of Canada,
 St. Polycarpe, Que.
 Banque Provinciale du Canada,
 St. Raphael, Q.
Banque Nationale, St. Raymond, Q.
 Eastern Townships Bank, St. Remi, Q.
Bank of Montreal...
 St. Roch, Q.
Banque d'Hochelaga...
 St. Roch, Q.
Banque Nationale...
 St. Roch, Q.
Quebec Bank...
 St. Roch, Q.
 Merchants Bank of Canada,
 St. Sauveur, Que.
 Banque Provinciale du Canada,
 St. Scholastique, Q.
 Banque Provinciale du Canada,
 St. Stanislas, Q.
 Bank of Nova Scotia,
 St. Stephen, N.B.

BANKS AND THEIR AGENCIES.

Farmers Bank of Canada,
Shannonville, O.
Farmers' Bank of Canada,
Sharbot Lake, O.
Quebec Bank. Shawinigan Falls, Que.
Banque Nationale, Shawinigan Fall, Q.
Merchants Bank of Canada,
Shawville, Q.
Bank of Montreal... ..Shediac, N.B.
Sterling Bank of Canada,
Shedden, O.
Northern Crown Bank, Sheho, Sask.
Bank of Toronto... ..Shelburne, N.S.
Canadian Bank of Commerce,
Shelburne, N.S.
Union Bank of Canada, Shelburne, O.
Bank of Montreal ..Sherbrooke, Q.
Banque d'Hochelaga,
Sherbrooke, Q.
Banque Nationale,
Sherbrooke, Q.
Eastern Townships Bank,
Head Office Sherbrooke, Q.
Eastern Townships Bank,
Br. Office Wellington St.... " "
Merchants Bank of Canada... " "
Union Bank of Halifax,
Sherbrooke, N.S.
Union Bank of Canada,
Shoal Lake, Man
Royal Bank of Canada,
Shubenacadie, N.S.
Bank of Hamilton... ..
Simcoe, O.
Canadian Bank of Commerce,
Simcoe, O.
Molsons Bank... ..Simcoe, O.
Union Bank of Canada,
Sintaluta, Sask.
Molsons Bank... ..Smith's Falls, O.
Bank of Ottawa... .." "
Union Bank of Canada Smith's Falls, O.
Union Bank of Canada Smithville, O.
Sterling Bank of Canada..Sombra, O.
Northern Crown Bank,
Somerset, Man.
Bank of Hamilton ..Snowflake, Man.
Banque d'Hochelaga.Sorel, Q.
Molsons Bank... ..Sorel, Q.
Merchants Bank of Canada,
Souris, Man
Union Bank of Canada, Souris, Man.
Canadian Bank of Commerce,
Souris, P.E.I.
Farmers' Bank of Canada
Southampton, Ont.
Bank of Hamilton, Southampton, O

Royal Bank of Canada,
South River, O.
Sterling Bank of CanadaSparta
Northern Crown Bank, Sperling, Man.
Farmers' Bank of Canada,
Spring Brook, O.
Traders' Bank of Canada,
Springfield, O.
Bank of Nova Scotia, Springhill, N.S.
Union Bank of Halifax,
Springhill, N.S.
Canadian Bank of Commerce,
Springhill, N.S.
Merchants' Bank of Canada,
Ste Agathe des Monts, Que.
Banque Nationale,
St. Anne de la Pocatiere.
Banque Nationale... ..St. Alme, Q.
Bank of Hamilton, St. Albert, Alta.
Banque Provinciale du Canada,
St. Anselme, Q.
Bank of Nova Scotia... ..
St. Andrews, N.B.
Bank of Ottawa, St. Andrews, Que.
Eastern Townships Bank,
St. Armand, Que.
Banque d'Hochelaga,
St. Boniface, Man
Northern Crown Bank,
St. Boniface, Man.
Banque Nationale....St. Casimir, Q.
Bank of Nova Scotia,
St. Catharines, Ont.
Bank of Toronto,St. Catharines, O.
Canadian Bank of Commerce
St. Catharines, O
Imperial Bank of Canada,
St. Catharines, O.
Sterling Bank of Canada, " "
St. Jovite, Q.
Traders' Bank of Canada,
St. Catharines, O.
Banque de St. Hyacinthe,
St. Cesaire, Q.
Molsons Bank... ..St. Cesaire, Q.
Banque Nationale,
St. Charles (Bellechasse) Q.
Eastern Townships Bank,
St. Chrysostome, Q.
Western Bank of Canada,
St. Clements, O.
Banque Provinciale, St. Croix, Q.
Banque Provinciale du Canada,
St. Denis River, Richelieu.
Banque Nationale,
St. Evariste Station, Que.
Banque Provinciale du Canada,
St. Eustache, Q.

BANKS AND THEIR AGENCIES.

Eastern Townships Bank,
 St. Felix de Valois, Q.
 Eastern Townships Bank,
 St. Ferdinand d'Halifax, Q.
 Molsons Bank, St. Flavie Station, Q.
 Banque Provinciale du Canada,
 St. Flavien, Q.
 Banque Nationale,
 St. Francois du Lac, Q
 Eastern Townships Bank,
 St. Gabriel de Brandon, Q
Merchants' Bank of Canada,
 St. George, O
 Eastern Townships Bank,
 St. George, Beauce, Q.
 Quebec Bank, St. George Beauce, Q.
 Bank of Nova Scotia... ..
 St. George, N.B.
 Banque Provinciale du Canada,
 St. Gertrude, Que.
 Banque Provinciale du Canada,
 St. Guillaume d'Upton, Q
Eastern Townships Bank,
 St. Hyacinthe, Q
 Banque de St. Hyacinthe,
 St. Hyacinthe, Q.
Banque d'Hochelaga,
 St. Hyacinthe, Q.
Banque Nationale,
 St. Hyacinthe, Q.
 Bank of Nova Scotia, St. Jacobs, Ont.
 Banque d'Hochelaga St. Jacques Co.
 Montcalm, Q.
 Banque Provinciale,
 St. Jean, Port Joli, Q.
 Merchants Bank of Canada,
 St. Jerome, Q
 Banque d'Hochelaga... ..St. Jerome, Q.
 Bank of British North America,
 Union St. St. John, N.B.
 Bank of British, North America,
 St. John, N.B.
 Bank of Montreal... ..St. John, N.B.
Bank of New Brunswick,
 Head Office.St John, N.B.
 Bank of New Brunswick,
 North End Branch... .. "
 Bank of New Brunswick, West
 End... .. "
 Bank of Nova Scotia,
 Bank of Nova Scotia,
 Charlotte St. "
Bank of New Brunswick,
 North End Br. "
Bank of New Brunswick,
 Market Br., St. John, N.B.
Canadian Bank of Commerce,
 St. John, N.B.

Royal Bank of Canada,
 St. John, N.B.
Royal Bank of Canada,
 North End, "
 Union Bank of Halifax, St. John, N.B.
Bank of Montreal, St. John's, Nfld.
 Bank of Nova Scotia... .. "
 Newfoundland Savings Bank,
 St. John's, Nfld.
 Royal Bank of Canada, "
 Banque de St. Jean, Head Office,
 St. Johns, Q
 Banque Nationale... ..St. Johns, Q.
 Eastern Townships Bank, St. Johns, Q.
 Merchants Bank of Canada,
 St. Johns, Q
 Eastern Townships Bank,
 St. Joseph, Beauce, Q
 Merchants Bank of Canada,
 Bank of Toronto... ..St. Lambert. Q.
 Banque Nationale,
 Ste. Marie de la Beauce, Q
 Bank of Montreal... ..St. Mary's, O.
 Bank of Nova Scotia... ..St. Mary's N.B.
Traders' Bank of Canada,
 St. Mary's, N.B.
 Molsons Bank... ..St. Ours, Que.
 Banque National... ..St. Pascal, Que.
 Banque Provinciale du Canada,
 St. Pascal, Que.
 Royal Bank of Canada,
 St. Paul, Que.
 Union Bank of Halifax,
 St. Peters, C.B.
Banque d'Hochelaga,
 St. Pierre, Man.
 Union Bank of Canada,
 St. Polycarpe, Que.
 Banque Provinciale du Canada,
 St. Raphael, Q.
Banque Nationale, St. Raymond, Q.
 Eastern Townships Bank, St. Remi, Q.
Bank of Montreal... ..
 St. Roch, Q.
Banque d'Hochelaga... ..
 St. Roch, Q.
Banque Nationale... ..
 St. Roch, Q.
Quebec Bank... ..
 St. Roch, Q.
 Merchants Bank of Canada,
 St. Sauveur, Que.
 Banque Provinciale du Canada,
 St. Scholastique, Q
 Banque Provinciale du Canada,
 St. Stanislas, Q.
 Bank of Nova Scotia,
 St. Stephen, N.B.

BANKS AND THEIR AGENCIES.

St. Stephen's Bank, St. Stephen, N.B.	Canadian Bank of Commerce,
Molsons Bank... ..St. Therese, Q.	Stratford, O.
Dominion Bank... ..St. Thomas, O.	Merchants' Bank of Canada,
Home Bank of Canada,	Stratford, O.
St. Thomas, O.	Traders' Bank of Canada,
Imperial Bank of Canada,	Stratford, O.
St. Thomas, O.	Union Bank of Canada,
Imperial Bank of Canada,	Strathclair, Man.
East End branch... ..	Dominion Bank... ..Strathcona, Alta.
Merchants Bank of Canada,	Canadian Bank of Commerce,
Molsons Bank,	Strathcona, Alta.
West end Branch, St. Thomas, O.	Imperial Bank of Canada,
Molsons Bank	Strathcona, Alta.
East end Branch, St. Thomas, O.	Union Bank of Canada,
Banque Nationale... ..St. Tite, Q.	Strathmore, Alta.
Eastern Townships Bank,	Canadian Bank of Commerce,
Stanbridge East, Q.	Strathroy, O.
Quebec Bank.....	Standard Bank of Canada,
Stanford, Q.	Traders' Bank of Canada,
Eastern Townships Bank, Stanstead, Q.	Strathroy, O.
Bank of Hamilton, Starbuck, Man.	Metropolitan Bank, Streetsville, O.
Canadian Bank of Commerce,	Bank of Ottawa, Stroughton, Sask.
Stavelly, Alta.	Traders' Bank of Canada,
Bank of Toronto... ..Stayner, O.	Sturgeon Falls, O.
Bank of British North America,	Quebec Bank... ..Sturgeon Falls, Q.
St. Stephen, N. B.	Bank of Toronto... ..Sudbury, O.
Northern Crown Bank, Steveston, B.C.	Bank of Montreal... ..Sudbury, O.
Sterling Bank of Canada,	Traders' Bank of Canada,
Stevensville, O.	Sudbury, O.
Bank of Nova Scotia, Stellarton, N.S.	Bank of Montreal...Summerland, B.C.
Union Bank of Halifax,	Bank of Nova Scotia,
Stellarton, N.S.	Summerside, P.E.I.
Merchants Bank of Canada,	Canadian Bank of Commerce,
Stettler, Alta.	Summerside, P.E.I.
Traders' Bank of Canada,	Bank of New Brunswick, "
Stettler, Alta.	Royal Bank of Canada,
Bank of Montreal... ..Stirling, O.	Western Bank of Canada,
United Empire Bank of Canada,	Sunderland, O.
Stirling, Ont.	Bank of Nova Scotia... Sussex, N.B.
Union Bank of Canada,	Bank of New Brunswick, "
Stittsville, O.	Eastern Townships Bank, Sutton, Q.
Bank of Hamilton... ..Stonewall Man.	Metropolitan Bank, Sutton West, O.
Northern Crown Bank,	Bank of Toronto,
Stonewall, Man.	Swan River, Man.
Traders' Bank of Canada,	Canadian Bank of Commerce,
Stoney Creek, O.	Swan River Man
Canadian Bank of Commerce,	Bank of Hamilton,
Stony Plain, Alta.	Swan Lake, Man.
Farmers Bank of Canada,	Eastern Townships Bank,
Stouffville, Ont.	Sweetsburg, Q.
Metropolitan Bank... ..Stouffville, O.	Union Bank of Canada,
Standard Bank of Canada,	Swift Current, Sask.
Stouffville, O.	Union Bank of Canada, Sydenham, O.
Bank of Ottawa... ..Stoughton, Sask.	Bank of Montreal.....
Union Bank of Canada,	Sydney, N.S.
Strassbourg, Sask.	Royal Bank of Canada,
Bank of Montreal... ..Stratford, O.	Sydney, N.S.

BANKS AND THEIR AGENCIES.

Canadian Bank of Commerce,
 Sydney, C.B.
Union Bank of Halifax, Sydney, C.B.
Bank of Nova Scotia,
 Sydney Mines, N.S.
Union Bank of Halifax,
 Sydney Mines, N.S.
Eastern Townships Bank, Taber, Alta.
Canadian Bank of Commerce,
 Fagaske, Sask.
Sterling Bank of Canada,
 Tamworth, Ont.
Merchants Bank of Canada, Tara, O.
Traders' Bank of Canada,
 Tavistock, O.
Western Bank of Canada,
 Tavistock, O.
Home Bank of Canada, Tecumseh, O.
Sterling Bank of Canada, Temworth
Banque Provinciale du Canada,
 Terrebonne, Q.
Bank of Hamilton... Teeswater, O.
Canadian Bank of Commerce,
 Thedford, O.
Eastern Townships Bank,
 Thetford Mines, Q.
Eastern Townships Bank,
 Thetford Mines West, Que.
Quebec Bank .. Thetford Mines, Q.
Traders' Bank of Canada,
 Thamesford, O.
Merchants Bank of Canada,
 Thamesville, O.
Imperial Bank of Canada,
 Thessalon, Ont.
Union Bank of Canada,
 Theodore, Sask.
Bank of Toronto .. Thornbury, O.
Home Bank of Canada,
 Thorndale, O.
Sterling Bank of Canada,
 Thornhill, O.
Union Bank of Canada, Thornton, O.
Quebec Bank .. Thorold, O.
Quebec Bank..... Three Rivers
Banque Provinciale du Canada,
 Three Rivers, Que.
banque nationale... Three Rivers, Q.
Banque d'Hochelaga... Three Rivers
Dominion Bank... Tilbury, O.
Merchants Bank of Canada,
 Royal Bank of Canada, Tilsonburg.
Traders' Bank of Canada,
 Tilsonburg, O.
Western Bank of Canada,
 Tilsonburg, O.
Bank of Ottawa .. Tisdale, Sask.

Western Bank of Canada,
 Tiverton, Ont.
Merchants Bank of Canada,
 Tonawanda, N.Y.
Bank of British North America,
 Toronto
Bank of British North America,
 Bloor & Landowne... Toronto, O.
Bank of British North America,
 King and Dufferin Sts.. Toronto, O.
Bank of Hamilton.....
 Toronto, O.
Bank of Hamilton, Queen and
 Spadina .. " "
Bank of Hamilton, College St.
 Branch... " "
Bank of Hamilton
 Cor. Yonge and Gould. " "
Bank of Montreal,
 Yonge St.,
 Toronto
Bank of Montreal...
 (Ontario Bank Branch).
 Wellington St. " "
Bank of Montreal,
 (Ontario Bank Branch).
 Richmond St. " "
Bank of Montreal,
 (Ontario Bank Branch).
 Carlton St. .. Toronto
Bank of Nova Scotia,
 King St.,
 Toronto
Bank of Nova Scotia,
 Dun-
 das St. Branch... " "
Bank of Ottawa,
 King St.,
 Toronto, O.
Bank of Ottawa Broadview and
 Gerrard Sts... Toronto
Bank of Toronto,
 Head Office, Toronto.
Bank of Toronto, King and
 Bathurst Sts .. " "
Bank of Toronto, Elm St... " "
Bank of Toronto, 205 Yonge St. " "
 Toronto
Bank of Toronto, cor Queen St.
 East and Bolton .. " "
Bank of Toronto, Queen St.
 West and Spadina Ave.. " "
Bank of Toronto, Queen East
 and Parliament Sts.. " "
Bank of Toronto,
 Wellington St. E. cor. Church " "
Canadian Bank of Commerce,
 Head Office... Toronto

BANKS AND THEIR AGENCIES.

Canadian Bank of Commerce,
College St. Branch... ..Toronto

Canadian Bank of Commerce,
Parliament St. Branch... ..Toronto

Canadian Bank of Commerce,
King St. E., Market Branch, Toronto

Canadian Bank of Commerce,
Queen corner Bathurst... ..Toronto

Canadian Bank of Commerce,
Queen St. W. Parkdale Br., “

Canadian Bank of Commerce,
Bloor and Yonge St. “

Canadian Bank of Commerce,
Yonge North of Queen, “

Canadian Bank of Commerce,
Yonge St. “

Northern Crown Bank... .. “

Northern Crown Bank, Agnes
St. “

Northern Crown Bank,
Spadina & College, “

Dominion Bank,
Head Office,
Toronto

Dominion Bank, City Hall.. “

Dominion Bank,
Bloor St. Branch,
cor. Bloor and Bathurst..Toronto

Dominion Bank, Queen St. West,
Toronto

Dominion Bank, Sherbourne St.,
Toronto, O.

Dominion Bank,
Yonge and Cotting-
ham Sts... ..Toronto

Dominion Bank,
Avenue Road,
Toronto

Dominion Bank,
Dovercourt Road,
Toronto, O.

Dominion Bank,
Esther St. Br.,
Toronto

Dominion Bank,
Dundas St.,
Toronto

Dominion Bank,
Market Branch,
Toronto:

Dominion Bank, Union Stock Yard,

Dominion Bank,
Spadina av.,
Toronto

Dominion Bank,
Broadview av.,
Toronto, O.

Dominion Bank,
Victoria St.,
Toronto, O.

Farmers' Bank of Canada,
Head Office “

Home Bank of Canada,
Head Office, 8 King St. West, Toronto

Home Bank of Canada,
Bloor and Bathurst Sts... “

Home Bank of Canada,
Church St... .. “

Home Bank of Canada,
Queen and Bathurst Sts.. “

Home Bank of Canada,
Queen and Ontario... .. “

Home Bank of Canada,
Dundas St. West... .. “

Imperial Bank of Canada,
Market and Front... .. “

Imperial Bank of Canada,
Bloor & Lansdowne Br... “

Imperial Bank of Canada,
King and Sherbourne.... “

Imperial Bank of Canada,
Head Office... .. Toronto

Imperial Bank of Canada,
Yonge and Queen Sts. “

Imperial Bank of Canada,
Yonge and Bloor Sts. “

Imperial Bank of Canada,
King and Spadina Branch “

Imperial Bank of Canada,
King and York Sts. “

Merchants' Bank of Canada,
Parliament St. “

Metropolitan Bank,
cor. College and Bathurst Sts. “

Metropolitan Bank, Broadview
and Danforth Aves... .. “

Metropolitan Bank,
cor Dundas and Arthur Sts “

Metropolitan Bank
Queen St. W and Dunn Av “

Metropolitan Bank,
Queen St. E. and Lee av “

Metropolitan Bank.
corner Queen and McCaul Sts “

Metropolitan Bank,
44-46
King St. West... .. “

Molsons Bank.....
Bay Street, Toronto

Molsons Bank.....
Queen St. West Br. “

Penny Bank of Toronto .. . “

BANKS AND THEIR AGENCIES.

Quebec Bank	Toronto	Bank of Hamilton,	Tuxford, Sask.
Royal Bank of Canada,	"	Bank of Montreal.. . . .	Tweed, O.
Royal Bank Dundas St.,	"	Traders' Bank of Canada,	
Standard Bank of Canada,			Tweed, O.
Head Office.. . . .	"	Standard Bank of Canada,	
Standard Bank of Canada,			Unionville, Ont.
Bay St. Temple Building	"	Eastern Townships Bank, Upton, Q.	
Standard Bank of Canada,		Dominion Bank	Uxbridge, O.
King and West Markets Sts.,	"	Sterling Bank of Canada,	
Standard Bank of Canada,			Uxbridge, O.
Parkdale Branch.	"	Eastern Townships Bank, Valcourt, Q.	
Standard Bank of Canada,		Banque d'Hochelaga,	
Yonge St..	"		Valleyfield, Q.
Sterling Bank of Canada,		Banque Provinciale du Canada,	
Head Office.. . . .	"		Valleyfield, Q.
Sterling Bank of Canada,		Sterling Bank of Canada...Varna, O.	
Adelaide and Simcoe Sts..	"	Bank of British North America,	
Traders' Bank of Canada,			Vancouver, B.C.
Head Office. See adrt. p.	facing	Bank of Hamilton.. . . .	Vancouver, B.C.
List of Banks, p. 19	Toronto	Bank of Montreal.. . . .	Vancouver, B.C.
Traders' Bank of Canada,		Bank of Nova Scotia.. . . .	"
Queen and Broadview.. . . .	"	Canadian Bank of Commerce,	
Traders' Bank of Canada,			Vancouver, B.C.
Av. road and Davenport		Canadian Bank of Commerce,	
road..	"	Park Drive.. . . .	Vancouver, B.C.
Traders' Bank of Canada,		Dominion Bank	Vancouver, B.C.
cor. King and Spadina av.	"	Eastern Townships Bank,	"
Traders' Bank of Canada,		Imperial Bank of Canada,	
Yonge and Bloor Sts.. . . .	"	Merchants Bank of Canada,	
Union Bank of Canada	"	Molsons Bank	Vancouver, B.C.
United Empire Bank of Canada,		Northern Crown Bank,	
Montreal Branch.. . . .	"		Vancouver, B.C.
	Toronto, O	Northern Crown Bank, Granville St.,	
Bank of British North America,			Vancouver, B.C.
	Toronto June, O.	Northern Crown Bank, Mt. Pleasant,	
Bank of Hamilton .. Toronto June.			Vancouver, B.C.
Canadian Bank of Commerce,		Royal Bank of Canada,.. . . .	"
	Toronto Junction, O	Royal Bank of Canada, East	
Dominion Bank of Canada,		End	"
	Toronto Junction, O.	Royal Bank of Canada, Granville St.,	
Molsons Bank .. Toronto Junction, O.			Vancouver B.C.
Sterling Bank of Canada,		Royal Bank of Canada.	
	Toronto Junction, Ont.		Mount Pleasant. "
Traders' Bank of Canada,		Royal Bank of Canada, Cordova St.,	
	Tottenham, O	Royal Bank of Canada. Bridge St.,	
Bank of British North Amer-			Vancouver, B.C.
ica,		Union Bank of Canada.	
Sub-Branch, Trail, B.C.			Vancouver, B.C.
Canadian Bank of Commerce,		Canadian Bank of Commerce.	
	Treherne, Man		Vancouver East, B.C.
Molsons Bank	Trenton, O.	Canadian Bank of Commerce,	
Bank of Montreal	Trenton, O.		South Vancouver, B.C.
Farmers' Bank of Canada,		Banque d'Hochelaga.	
	Trenton, Ont.		Vankleek Hill. O
Banque Nationale ..Trois Pistoles, Q.		Bank of Ottawa.. . . .	"
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 tin..... "
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Watts A. E.	"	Field F. M. See card p 13.	"
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B., H. A. Allison, W. P. Taylor, H. H.	"	Carpenter A. A.	Innisfail
McLaws.	"	Oldham F. M.	"
Millican & Millican.	"	Durie C. L.	Lacombe
Muir Jephson & Adams James		Harding H. T.	"
Muir, K.C., J. P. J. Jephson, B.		Trimble & Poole. H. M. Trimble, J. I.	
A. (Cantab.) Chas. F. Adams. . .	"	Poole.	"
Nichols, E. Hart.	"	Conybeare & Jones.	Lethbridge
Nolan P. J.	"	Harris, C. F.	"
Reilly & McLean. Clifford B. Reilly, H.	"	Ives W. C.	"
W. McLean.	"	Johnstone L. M.	"
Ryan E. F.	"	Ritchie, J. N.	"
		Simmons W. C.	"
		Thompson D.	"
Short, Ross, Selwood & Har-		Campbell W. M.	MacLeod
vie. James Short, G. H. Ross, F. S.		Dickson T.	"
Selwood, A. D. Harvie. <i>See card p. 16.</i>	"	Fawcett J. G.	"
Steele, H. S.	"	Harris C. F.	"
Stewart, Tweedie & Charman. R. Ste-	"	Hicks J.	"
wart, T. M. Tweedie, J. M. Charman.	"	Macleod C.	"
Varley & Lathwell, J. E. Varley	"	McKenzie & McNeill, M. McKenzie, E.	
W. T. D. Lathwell.	"	R. McNeill.	"
Wainess W. L.	"	Begg, W. A.	Medicine Hat
Walsh & McCarthy, W. L. Walsh, K.C.,	"	Kealy O. W.	"
M. S. McCarthy.	"	Mahaffy, J. J.	"
Laurie William.	Cardston	White D. Guthrie.	"
Moore C. W.	Carstairs	Ball F. S.	Montgomery
Haslam H. O.	Claresholm	Fuller D. W. W.	"
Martin T. B.	Coleman	Stockford O. B.	Okotoks
Moore, C. W.	Crossfield	Cumming L. H.	Olds
MacLeod, J. E. A.,	Didsbury	Steele H. S.	"
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Bishop C. A. Grant, E. E. Dela-		Jackson J. A.	Ponoka
vault.	Edmonton	O'Brien & Burgess (H. O. Wetaskiwin).	"
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Bown, Wallace McDonald.	"	CRAFORD J. L.	Red Deer
Boyle & Parlee, J. R. Boyle H.	"	Greene & Payne. G. W. Greene, W.	
Parlee.	"	E. Payne.	"
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Mackay.	"	Mills & Downes. N. D. Mills, G. F.	
Cowan Hector.	"	Downes.	Strathcona
Cowan I. S.	"	Rutherford & Jamieson, Alex. C. Ruth-	
Dawson Hyndman & Hyndman. Herbert	"	erford, Fred'k. C. Jamieson.	"
J. Dawson, James D. Hyndman, H. H.	"	Tipton J. W.	"
Hyndman.	"	Smyth W. C.	Swift Current
Dubuc L.	"	Wallace, R. P.	Tabor
Edwards & Madore E. Edwards L.	"	McDonald, McKimmon & Cogswell	Vegreville
Madore.	"	Morrison F. H.	"
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C. F. Newell, S. E. Bolton.	"	Murray N.	"
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Edgar.	"	Henwood & Wilkins. G. B. Henwood,	
Garipey & Landry W. Garipey H.	"	E. D. H. Wilkins.	"
Landry.	"	oggie W. J.	"
Griesbach & O'Connor, W. A. Gries-	"	O'Brien & Burgess, M. E. O'Brien, J.	
bach, — O'Connor.	"	K. Burgess.	"
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wood W. G. Harrison.	"		
McDonald J. K.	"		

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Clark, Herbert G. Wilson, F. J. Stack-	"	Tabor C. W. C.	"
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		Chisholm J. M.	"
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Rogers, S. Jenks, H. A. Purly	"	Cummings A. G.	"
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ton S. Corey.	"	Desbarres L. W.	"
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		ton, J. B. Kenny.	"
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Finlayson Duncan.	Arichat		
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DOUGLAS & CHIPMAN	Glace Bay	KERNY.	"
Harrington & Cameron. Gordon S.	"	McNeil Alex.	"
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itchie J. J.	"	McDonald A.	"
ross J. T.	"	McLennan Daniel	"
ross W. B., K.C.	"	McLennan, Donald	"
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Lane C. W.	"	Moseley H. C.	"
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Sedgwick J. A.	Musquodobo	Campbell A. J.	"
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Graham, K. H.	"	Ferguson W. M.	"
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Jennison H. V., LL.B.	"	McKenzie H.	"
Sinclair J. H.	"	McLachy H. O.	"
Archibald Blowers	North Sydney	McLellan S. D.	"
Armstrong J. N.	"	Patterson A. C.	"
Butts R. H.	"	Putnam Harold	"
McDonald Joseph	"	Tremain Rufus A.	"
Mackenzie D. D.	"	Vernon Gilbert H.	"
MacMillan N. A.	"	Mackay Henry S.	Westville
Phalen R. F.	"	Robertson S. G.	"
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Campbells Simpson.	"	Wright S. R.	"
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aly, Crichton & McClure.	MONKMAN A.	
Hon. T. Mayne Daly, K.C., W. Madeley Crichton, Roland W. McClure. See card p. 16.	MOODY GEORGE	
waux, J. L.	Moran & Anderson. W. J. Moran, E. Anderson.	
novan W. J.	Morice & O'Connor. J. D. Morice, J. E. O'Connor, J. W. Renton.	
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Murphy James	Atlin	Cayley & Cochrane, H. S. Cayley, W. B.	"
Fisher, W. E.	Arthur	Cochrane	Phoenix
Pelly Justinian	Chilliwack	Gahan W. H. T.	Penticton
Dunbar C. H.	Cranbrook	Burrit William E.	Prince Rupert
Gurd W. F.	"	Carss A.	"
Harvey McCarten & Macdonald J.	"	GILLAN & ELLIOTT, C. E. Gillan,	"
A Harvey, G. S. McCarter M. A.	"	F. C. Elliott.	Revelstok
Macdonald.	"	Harvey, McCarten & Pinkham	"
Morley S. F.	"	Scott & Briggs, J. M. Scott, W. I.	"
Thompson Geo. H.	"	Briggs	"
Maclean, A.	Duncan Station	Dockerill, W. P.	Rossland
BANTON W. E.	Enderby	Hamilton C. R.	"
ECKSTEIN, L. P.	Fernie	Macdonald & Winn, J. A. Macdonald,	"
Herchmer, H. W.	"	E. S. H. Winn	"
Herchmer, S.	"	Jorand H. R.	Slocan
Lawe & Fisher, F. C. Lawe, A. J.	"	Brandon, W. M.	Trail
Fisher.	"	Gillan & Elliott, C. E. Gillan, F. C.	"
Ross & Alexander, W. R. Ross, J.	"	Elliott.	Trout Lake City
S. T. Alexander.	"	Eckstein L. P.	Union
Harvey, McCarten & Pinkham.	Golden	Alexander H. O.	Vancouver
MacDonald Hugh	"	Belyea A. L.	"
Cochrane, W. B.	Grand Forks	Baxter, McLellan & Savage, T. S. Bax-	"
Hanington H. C.	"	ter, L. B. McLellan, W. Savage.	"
McDonald & Whiteside, J. A. McDonald,	"	Boak H. W. C.	"
D. Whiteside	"	Bond & Sweet, L. Bond, J. H. Sweet	"
Miller Ernest	"	Bowser, Reid & Wallbridge, W. J.	"
Sutton A. C.	"	Bowser, K. C. K. L. Reid, D. S. Wall-	"
Brown J. R.	Greenwood City	bridge.	"
Hallett I. H.	"	Brathwaite Cabel.	"
McLeod J. P.	"	Burns & Walkem.	"
Cornwall F. F.	Kamloops	Cane Hon. G. F.	"
Fulton & Morley, F. J. Fulton, H. L.	"	Cassidy R.	"
Morley	"	Chaldecott F. M.	"
Macintyre & Murphy, A. D. Macintyre,	"	Cowan & Parkes, G. H. Cowan, R. B.	"
James Murphy.	"	Parkes	"
Morley H. L.	"	Donaghy D.	"
Swanson J. D., solicitor for city of	"	Duncan & Arnot.	"
Kamloops	"	Elliott John	"
MacKay, N. F.	Kaslo	Ellis, Brown & Creagh, J. N. Ellis, W.	"
Burne, J. F.	Kelowna	C. Brown, A. R. Creagh.	"
Kerr, R. B.	"	Grant D.	"
Cherry J. B.	Lillooet	Hanersley A. St. G.	"
Leggatt C. J.	Midway	Haney & Moore, C. N. Haney, S. A.	"
Barker C. H.	Nanaimo	Moore	"
Potts, C. H. B.	"	Harris & Bull, R. W. Harris, A. E.	"
Simpson J. H.	"	Bull	"
Yarrow E. M.	"	Hunt S. L.	"
Crease E. A.	Nelson	Jenns E. A.	"
Johnson A. M.	"	Kapelle & McEvoy, A. Kapelle, A.	"
Lennie & Wragge, R. S. Lennie,	"	McEvoy	"
E. C. Wragge	"	Livingston J. H.	"
Macdonald, R. M.	"	Livingston, Garrett & King, S. Living-	"
MacDonald & Hall, W. A. MacDonald,	"	ston, L. L. B., A. E. Garrett, H. de	"
H. C. Hall	"	W. King, L. L. B.	"
Stewart H. A.	"	Lucas F. G. T.	"
Taylor & O'Shea Sydney S. Taylor,	"	Macdonell, Henderson & Jones, D.	"
James O'Shea	"	Macdonell, A. Henderson, E. Jones.	"
Alexander H. O.	New Denver	Martin, Craig & Bourne, Joseph Mar-	"
Kerr R. B.	"	tin, C. W. Craig, H. A. Bourne	"
Bole J. P.	New Westminster	McCrossan, Schultz & Harper, G. E.	"
Bole, W. N. K. C.	"	McCrossan, S. D. Schultz,	"
Cassidy R., K. C.	"	McEvoy Arthur	"
Corbould & Grant, G. E. Corbould, K. C.	"	McGill J. H.	"
J. R. Grant.	"	McHarg W. Hart	"
Gray W. Myers	"	McKay & O'Brian, W. M. McKay, C.	"
Hansford, W. F.	"	M. O'Brian.	"
Martin G. E.	"	McLeod F. M.	"
Martin, & McQuarrie, J. Mar, W. G.	"	McPhillips, Tiffin & Laursen, L. G.	"
cQuarrie	"	McPhillips, F. W. Tiffin, V. Laursen.	"
McBride & Kennedy, R. McBride, J.	"	Mills J. B.	"
D. Kennedy	"	Plunkett O.	"
Whealler A.	"	Powell Geo. E.	"
Whiteside & Edmonds, W. J. White-	"	Russell & Russell, J. A. Russell, F. R.	"
side, H. L. Edmonds.	"	McD. Russell.	"

LAWYERS OF THE DOMINION

Waters C. W.	Vancouver	Hall H. G.	Victoria
Dunks R. C.	"	Higgins F.	"
Dowley T. O.	"	Hills H. M.	"
Upper & Griffin	"	Innes A. S.	"
Adair F. C.	"	Keeper H. C.	"
Whiteside & Robertson	"	Kitts H. J.	"
Williams, Shaw & Walsh	"	Langley, W. H.	"
H. C. Shaw, W. W. Walsh	"	Lowe R. C.	"
Wilson, Senkler & Bloomfield Chas.	"	Macrea F.	"
Wilson, K.C., J. H. Senkler, E. Bloomfield	"	Mason & Mann, C. D. Mason, J. P. Mann	"
Antemute B. P.	"	Maclean H. A. (with Drake, Jackson & Helmcken)	"
Billings F.	Vernon	McIntosh J. Chas.	"
Bridgman A.	"	McPhillips & Heisterman. A. E. McPhillips K.C., H. G. S. Heisterman	"
Bochrane A. O.	"	Mills S. Perry, K.C.	"
Boyers R. H.	"	Moresby & O'Reilly. W. C. Moresby, A. J. O'Reilly	"
Boys Oscar C.	Victoria	Morphy G. A.	"
Barnard & Robertson. G. H. Barnard, H. B. Robertson	"	Oliver W. E.	"
Bodwell & Lawson	"	O'Reilly A. J.	"
Bradshaw & Davie, C. W. Bradshaw, C. F. Davie	"	Peters & Wilson, F. Peters, K. C., Chas. E. Wiloon	"
Barss, A.	"	Pooley, Luxton & Pooley, Hon. C. E. Pooley, K. C., A. P. Luxton, R. H. Pooley	"
Bird, Sydney	"	Prior C. J.	"
Bourtney, C. K.	"	Rogers D. M.	"
Bourtney H. E. A.	"	Turner, H. A.	"
Crease & Crease. L. Crease, A. D. Crease	"	Twigg, H. D.	"
Drake, Jackson & Helmcken. H. D. Helmcken, K.C.	"	Walls J. P.	"
Dumbleton, A. S.	"	Wootton & Goward. E. E. Wootton, B. G. Goward	"
Eberts & Taylor. Hon. D. M. Eberts, K. C., W. J. Taylor, K.C.	"	Yates & Jay, J. S. Yates, Geo. Jay	"
Elliott & Shandley, R. T. Elliott K.C., H. H. Shandley	"	Burne J. T.	Ymir
Fell & Gregory. Thornton Fell, F. B. Gregory	"		

ATTORNEYS IN UNITED STATES.

BUFFALO, N.Y.

CLINTON B. GIBBS,

85 Erie Co. Bank bldg.

CORDON F. MATTHEWS,

997 Ellicott sq.

MINNEAPOLIS, MINN.,

STEVENS & STEVENS.

425 Palace bldg.

NEW YORK.

CHS. SULLIVAN,

346 Broadway,

See card p. 53

PHILADELPHIA, Pa.

CARR, BEGG & STEINMETZ

607-910 Provident Building,
Chestnut and Fourth streets.

See card p. 53

ATTORNEYS IN EUROPE.

DUBLIN, IRELAND.

MEARS, G. M.

16 Molesworth st.

EDINBURGH, SCOTLAND.

KINMONT & MAXWELL.

86 George st.

OMAHA, NEB.,

MONTCOMERY & HALL,

608 N. Y. Life bldg.

See card p. 53.

SIOUX FALLS, S. D.,

BAILEY & VOORHEES,

Syndicate bldg.

See card p. 53.

JOSEPH MITCHELL DONOVAN,

See card p. 54

TAMPA, FLORIDA.

FRAZIER & MABRY,

See card p. 54

BRIDGETOWN, BARBADOS,

COTTLE, CATFORD & CO.,

17 High st.

See card p. 54

PARIS, FRANCE.

BARCLAY, EDWARD J. G.

8 rue Meyerbeer

BERLIN, GERMANY,

DP. HUGO WALDECK,

58 Mohrenstrasse

See card p. 54.

Notaries in the Dominion of Canada,

(As a general rule Barristers in all the Provinces except Quebec are also Notaries

PROVINCE OF QUEBEC.

Deslandes L. O	Acton,	Q	LeGuerrier D.	Fort Coulonge,
Dionne Geo. L	Amqui,	Q	Blondeau A	Fraserville,
Pageot Hy. J.	Ancienne Lorette,	Q	Dugal I. Jos.	"
Beauchesne J. A.	Arthabaskaville,	Q	Foisy J. A.	"
Boucher Honoré.	"	Q	Langlais P.	"
Garneau C. E. R.	"	Q	Dozois Joseph L.	Granby
Lavergne L.	"	Q	Lecuyer Pierre A.	"
Lemieux F. V.	"	Q	Tartre C. E. A.	"
Dumouchel Geo. L.	Aylmer,	Q	Blondin Pierre E.	Grand' Mere,
Dufour Alfred.	Bagotville	Q	Baudin C. L.	Grenville,
Cimon T. A.	Baie St Paul,	Q	Dumais Severin.	Hebertville,
Paré J. O.	"	Q	Michaud Napoleon.	"
Tassé Ladislas C.	Beauharnois,	Q	Amirault J. A. V.	Hemmingford,
Trudeau J. C.	"	Q	Desjardins Henry,	county clerk
Marcoux Jos. D.	Beauport,	Q	county of Wright, 86 Victoria.	Hull,
Delage H.	"	Q	Labelle F. A.	"
Vezina Aug.	Beaupré,	Q	Tetrault Nere, M.P.P.	"
Blondin Joseph A.	Becancour,	Q	Leduc A. R.	Huntingdon,
Desilets Antoine O.	"	Q	Beauregard J. B. H.	Iberville,
Dumont P. Albert.	"	Q	Nadeau Jos. A.	"
Lébeau J. E.	Bedford,	Q	Bertrand Louis.	Isle Verte,
Bedard J. P. M.	Belœil,	Q	Beaudoin C. G. H.	Joliette,
Brillon Jos. R.	"	Q	Beaudoin J. A.	"
Aubin J. A. L.	Berthier,	Q	Cabana A.	"
Lavallee J. Octave.	"	Q	Chevigny J. B.	"
Lavallee Octave	"	Q	Desormiers Dieudonné.	"
Tellier Pierre.	"	Q	Ferland J. A. N.	"
Racicot Louis	Boucherville,	Q	Guilbault J. P. O.	"
Desmarais J. O.	Brompton Falls,	Q	Lavallee S. A.	"
Guy Alphonse	Buckingham,	Q	Lebel Thomas M. T.	Kamouraska,
Lippé Charles A. H.	"	Q	Flcury Ernest.	Knowlton,
Roy J. O.	Cap St. Ignace,	Q	Belcourt J. L.	La Baie du Febvre,
Laberge M. P.	Cedar Hall,	Q	Ashby J. S. A., office 575 St Joseph,	res 107 College.
Scheffer Chas. Gedeon.	Chambly,	Q		Lachine,
Bertrand Emery P.	Chambly Basin,	Q	Forest Leon.	"
Marchand J. E.	Champlain,	Q	Lepailleur A. Narcisse.	"
Dick Gabriel.	Chateau Richer,	Q	Valois J. E.	Lachute,
Gadoury Geo. L.	Cheneville,	Q	Treublay J. U. A.	Lacolle,
Bossé M. O.	Chicoutimi,	Q	Leblanc M. J. E.	Lac Nominique,
Maltais David.	"	Q	Lippé F. X.	Lake Mégantic,
St Pierre Geo.	Chicoutimi,	Q	Thibaudau Jos. H.	"
Chagnon H. C. H.	Coaticook,	Q	Mennier Francois.	L'Ange Gardien,
Fraser John.	"	Q	Morissette Philias.	L'Annonciation,
Gendreau J. Bte.	"	Q	Poirras Louis.	Lanoraie,
Dupuy J. B.	Contrecoeur,	Q	Groncin A. Francois.	Laprairie,
Beauchemin Jos.	Cookshire,	Q	Larose L. F.	"
Mackie Jos. I.	"	Q	Leblanc G. A.	"
Dumesnil J. E. R.	Coteau Landing,	Q	Bonin Jos. Alfred.	L'Assomption,
Du Boyce P. C.	Cowansville,	Q	Duhamel Jos. E.	"
Hart Moses O.	"	Q	Lemire Elie.	"
Girard Z. H. A.	Danville,	Q	Lemire Francois Xavier.	"
Houle Joseph.	Daveluyville,	Q	Lesage C. E. G.	"
Descarreaux J. N. Ed.	Deschambault,	Q	Martel Jos. Z.	"
Moisan J. P. A.	Drummondville,	Q	Rivest Joseph S.	"
Robillard P. E.	"	Q	Rivest Chas. J. S.	"
Therrien J. N.	East Broughton	Q	Beaudoin R. T.	Laurentides,
Bériaud L. A.	Farnham,	Q	Gauthier Damase.	"
Noiseux S.	"	Q	Renaud P.	"
			Couillard F. X.	Laizon,
			Lagueux Joseph.	"

NOTARIES IN THE DOMINION OF CANADA

St Amant Jos. Chas.	L'Avenir,	Q	Desautels J. A.	Montreal,	Q
Paradis Geo. E.	Laurenceville,	Q	Dominique C. M.	"	"
Leonard J. Bte.	L'Epiphanie,	Q	Dorval Philippe	"	"
Richard J. B. Trefflé.	"	"	DOUCET & PHILLIPS	"	"
LaTerriere Edmond de Sales.	Les Eboulements,	Q	Dufresne E. R.	"	"
Audet L. O.	Levis,	Q	Dumesnil J. L. A.	"	"
Dumontier J. A. F.	"	"	Dumouchel R.	"	"
Fortier Louis	"	"	Dunton & Baby.	"	"
Lemieux V. E.	"	"	Ecrement M. G.	"	"
Roy J. E. A.	"	"	Fair & Cameron	"	"
Roy Jos. E.	"	"	Faribault R.	"	"
Leclerc Cleophas.	L'Islet,	Q	Forgues L. S.	"	"
Beauchamp Jos. Alfred.	Longue-Pointe,	Q	FRY & CLERK	"	"
Hetu Louis Gaspard	"	"	Germain C. E.	"	"
Brais L. J. E., sec treas. Parish of	Longueuil, County of Chambly, 18		Giasson J. O. V.	"	"
Chemin de Chambly	Longueuil,	Q	Gohier Hercule	"	"
Dupras J. S. U., sec-treas. school	"	"	Gratton A. Z.	"	"
commissioners, Montreal South,	"	"	Grenier L. A.	"	"
18 Chemin de Chambly	"	"	Guy E. P.	"	"
Gingras Isaie	"	"	Hart L. A.	"	"
Dagenais Magloire	"	"	Hebert J. A.	"	"
Charbonneau Joseph Edouard	Louiseville,	Q	Hebert J.	"	"
Coutu J. C.	"	"	Hetu L. E.	"	"
L'Arrivée Jean E.	Macnider,	Q	Houlé L. B.	"	"
Audet Louis A.	Magog,	Q	Hurteau Hilaire	"	"
Jasmin Hector.	"	"	HUTCHESON R. B.	"	"
Angers Elie	Malbaie,	Q	Jobin A. D.	"	"
Bouliane L. A.	"	"	Jolicoeur J. A. D.	"	"
Lacoursiere Tim	Maniwaki,	Q	KITTSON, REDDY & REDDY	"	"
Mondor Jean M.	"	"	Labadie J. A. O.	"	"
Fontaine D. Aug.	Marieville,	Q	Labadie Adolphe	"	"
Ste Marie Henri	"	"	Lacasse P. C.	"	"
Lamarche Jos. O.	Mascouche,	Q	Lachapelle J. E.	"	"
Mathieu Joseph P.	"	"	Laliberté Eusebe	"	"
Cardin Hector Lucien	Massueville,	Q	Lamarche J. P.	"	"
Cardin Louis Pierre	"	"	Lamarche J. S.	"	"
Hebert Joseph C.	Montmagny,	Q	Lamarche Valmore	"	"
Pion Geo. W.	"	"	Landy J. A.	"	"
Archambault Apollinaire	Montreal,	Q	L'Archeveque Em	"	"
Archambault Christophe	"	"	LECLERC C. E.	"	"
Archambault Eugene	"	"	Lemire Henri	"	"
Barnabé Jos	"	"	esage J. E. H.	"	"
Baynes O'Hara	"	"	Leveillé C. A.	"	"
Baudouin & Beaudoin	"	"	Levesque J. W.	"	"
Beaudry J. R. F.	"	"	Levy J.	"	"
Bedard Louis	"	"	Lighthall & Lighthall.	"	"
Belair L.	"	"	Loneragan James.	"	"
Belanger L.	"	"	Longtin Moise	"	"
Belanger Theophile	"	"	Lyman A. C.	"	"
Biron & Savignac	"	"	Mainville & Mainville	"	"
Bissonnette A. C. A.	"	"	Marin J. H.	"	"
Blain Jean	"	"	Marler W., de M & H. M.	"	"
Bonin Jos	"	"	Marler	"	"
Boileau L. J.	"	"	Mayraud Zeph	"	"
Bourdeau C. A.	"	"	Meunier J. U.	"	"
Bourgeois L. C.	"	"	Mondor J. N.	"	"
Brault H. A. A.	"	"	Morin & McKay	"	"
Brunet J. A.	"	"	Normandin G. A.	"	"
Cameron J. A.	"	"	Olivier J. H.	"	"
Charbonneau C. J. E.	"	"	Paquet Camille	"	"
Cholette L. E.	"	"	Paquin J. A.	"	"
Choquet Azarie	"	"	Payette A. E.	"	"
Cornier J. E.	"	"	Beplin Henri P.	"	"
Coté H. D.	"	"	Perodeau Narcisse (hon.)	"	"
Coutlee J. L.	"	"	Perrault Camille	"	"
CREPEAU F. G.	"	"	Perrault Medard	"	"
Crepeau Odilon	"	"	Phillips, W. H.	"	"
Cushing & Barron.	"	"	Prud'homme Eustache	"	"
Decary E. R.	"	"	Proulx W. J.	"	"
DeMartigny V. A. Le M.	"	"	Quintal I. A.	"	"
Demers G. H.	"	"	Rhault C. E. A.	"	"
Dequoy J. A. H.	"	"	Riendeau J. B. Antonin	"	"
Derome L. A.	"	"	Rietord Felix	"	"
DeSalaberry G. O.	"	"	Rivest A.	"	"
DeSalaberry Henri	"	"	Savignac J. A.	"	"
Desaulniers J. E. H.	"	"	Schetagne & Cadieux	"	"
			St. Denis A. J. H.	"	"

NOTARIES IN THE DOMINION OF CANADA

STUART, COX & McKENNA	Montreal, Q	Dubreuil A	Rapide de l'Original
Terrault Pierre	"	Rowat D. McK.	"
Theoret Nap.	"	Phaneuf Ant.	Rigaud
Trepanier J. P.	"	Bégin Désiré	Rimouski, Q
Merizzi P. R.	Napierville, Q	Belzile L. de G.	"
Dorais, Joseph A.	New Carlisle, Q	D'Anon J. L. C.	"
Trepanier Hector.	New Richmond, Q	St Pierre J. B.	Ripon, Q
Denis J. W.	Nicolet, Q	Dumais Israel.	Roberval, Q
Gauthier Narcisse	"	Latour Tim D.	"
Beaulieu C. F.	Notre Dame du Lac	Lindsay J. C.	"
Forest Z.	de Temiscouata, Q	Morisset Come. L. A.	"
Rousseau L. A.	Orms town, Q	Thibault J. A.	"
Harvey A. & B.	Ottawa	Lafontaine J. L.	Roxton Falls, Q
Varenes P.	Papineauville, Q	Raiche Jos.	"
Beauchesne Pierre C.	Paspebiac, Q	Marcoux Jos. H.	"
Boucher Aimé,	Pierreville, Q	Paquet Camille.	Sault au Recollet, Q
Gullbault L. R.	Plessisville, Q	Rondeau P. G.	Shawinigan
Gosselin C. E.	"	Bertrand L. Z.	Shawinigan Falls, Q
DeGuise F.	Plessisville de Somerset, Q	Desaulniers J. H. N.	"
Cornier J. E.	Pointe aux Trembles, Q	McKav S. A.	Shawville, Q
Smith Henry F.	"	Archambault J. A.	Sherbrooke, Q
Braut Calixte.	Pointe Claire, Q	Borlase G. E.	"
Gauvreau C. A.	Princeville, Q	Boudreau Edouard	"
Hebert Joseph A.	"	Felton E. P.	"
Allaire Jos.	Quebec, Q	Sylvestre Ernest	"
Audet Ferd.	"	Tetreault J. S.	"
Auger Jacques	"	Worthington & Borlase.	"
Baillargeou C. J.	"	Guevremont Alfred	"
Belanger P. E. E.	"	Lafreniere J. Bte, Théophile	"
Bolij J. E.	"	sec. the Catholic Schools Com.	"
Boisvert J. H.	"	St Martin L. N.	"
Campbell W N.	"	Gagne Joseph O.	St Adele, Q
Cantin J P.	"	Tremblay F. X. M. A.	St Agapit, Q
Charlebois J. A.	"	Bazin J. S. P.	St Agathe des Monts, Q
Chateauvert G. P. V.	"	DesRosiers F. X.	"
Chauveau Alex.	"	Mongeon F. L.	"
Couture Jos. G.	"	Lariviere J. G.	St Aime, Q
Delago Jean Bte	"	St Amant Leon	St Alban, Q
Delage C F.	"	Beaulieu Chas. Philippe,	"
Delagrave C. C.	"	St Alexandre de Kamouraska,	Q
DeLery G F C.	"	Boivin J. E.	St Alexandre d'Iberville, Q
Faucher J. A.	"	Goyet Jos.	St. Ambroise de Kildare, Q
Fortier J. A.	"	Renaud Cyrille	St Ambroise, Q
Gauvreau Alex.	"	Howard Hy.	St André, Q
Grenier Chas.	"	De Belleval J. A. F.	St. Anicet, Q
Huard Alp.	"	Houde H. H.	St Anne de Beupre, Q
Huot L P.	"	Beaudry Pierre Geo.	St Anne de la Pêrade, Q
Jacques L. C.	"	Beaudry Arthur	"
Lafrance C. A.	"	Bérubé Louis Joseph.	"
LARUE F. A.	"	Lapointe I. Saie	"
Larne Jules	"	Mousseau J. H.	"
Larne S. J.	"	Villeneuve F.	St Anne des Planes, Q
Larne W. R.	"	Fortin J. B. E.	St Anselme, Q
Leclerc Louis	"	Archambault A. M.	St Antoine, Q
Levasseur T.	"	Huet S.	St Antoine Abbé, Q
Mercier Alphonse	"	LaRue Joseph	St. Antoine de l'Ily, Q
Mercier F. A.	"	Lepine J. E.	St. Aubert, Q
Meredith E. G.	"	East J. O.	St. Augustin, Q
Meredith Reginald	"	Bellemare F. Xav.	St. Barnabé, Q
Pageau Chas.	"	Boucher Léger	"
Paradis G. A.	"	Gélinas Amedée.	"
Parkin J B.	"	Barrette J. A.	St. Barthelemy, Q
Pampalon T. M. W.	"	Rouleau F. E.	"
Paquet E. T.	"	Rouleau M. J. A.	"
Paradis G. A.	"	Girouard Jos.	St. Benoit, Q
Parent Louis	"	Des Rosiers Joseph	St. Bonaventure, Q
Plamondon J. E.	"	Langevin J. R. B.	St Brigitte, Q
ROY O. H.	"	Berthiaume Frs. X.	St Bruno, Q
Savard J.	"	Grandbois A. E.	St Casimir, Q
Savard Louis	"	Lacourcière N. E.	"
Simard A. E.	"	Gauvreau Louis R.	St Cécile du Bic, Q
Sirois L. P.	"	Demers J. E. O.	St Césaire, Q
Sirois Jos.	"	Dussault Pierre.	"
Strang John	"	Ruel Pierre Jos.	St Charles, Q
Taschereau C. E.	"	Archambault Nap. St Charles, River Richelieu, Q	
Tessier Cyrille	"	Cote J. H.	Ste Clothilde, Q
Verret C. A.	"	Cote M. J. E.	St. Come, Q
		Arnauld Francois E.	St Constant, Q

Lemay Louis	St Croix	Q	Jodoin M. H. A.	St. Hyacinthe,	Q
Pouliot J. A.	St Croix	Q	Morin & Morin	"	Q
Roberts L. P. A.	St Cuthbert,	Q	St. Germain Jules.	"	Q
Barrette Alex	St. Cyprien,	Q	St. Germain L. H.	"	Q
Ledoux Jos.	St. Cyr,	Q	Taché J. de la L.	"	Q
Paré Joseph F.	St. Cyrille,	Q	Perrault Camille	St. Isidore,	Q
Boisseau J. F. A.	St. Cyrille de Wendover,	Q	Audet Eugene J. Bte.	St Isidore, Dorchester,	Q
Turcotte Jos. N.	St. Cyrille de Normandin,	Q	Fortin T. J. M.	"	Q
Marchessault Zotique Thos.	St Damase,	Q	Granger Magloire	St Jacques de L'Achigan,	Q
Courchesnee J. O.	St David,	Q	Marion J. E. E.	"	Q
Pepin J. D.	"	Q	Archambault Eugene	St. Jean d'Iberville,	Q
Archambault E.	St Denis,	Q	Archambault F. X.	"	Q
Dauray Louis O.	"	Q	Brassard Telephone	"	Q
Feeney P. A. B.	St Edouard de Frampton,	Q	Deland Alfred N.	"	Q
Tourigny Jos. L.	St Edouard de Gentilly,	Q	Demers Jean Baptiste	"	Q
Gadoury Eugene	St Elizabeth,	Q	Fournier Joseph A.	"	Q
Gadoury Joseph	"	Q	Guillet Amédée I. G.	"	Q
Page Clovis E.	St Ephrem de Tring,	Q	Lussier Joseph E.	"	Q
Fafard Pierre	St Ephrem d'Upton	Q	Halde Misael	St Jean Baptiste,	Q
Daniel J. F.	St Esprit,	Q	Ashby David	Jt Jean Baptiste de Rouville,	Q
Brunelle Ulderico	St Etienne des Gres,	Q	Derome I. J. L.	St Jean Chrysostome,	Q
Fauteux Geo. N.	St Eustache,	Q	Marcell J. E.	"	Q
Fontaine L. A.	St Evariste de Forsyth,	Q	Dugas A.	St Jean de Matho,	Q
Lafamme J. C. H.	St. Fabien,	Q	Laliberte, E. H.	St. Jean Deschailions,	Q
Crepeau M.	St Felix de Valois,	Q	Duval Louis Zeph	St Jean Port Joli,	Q
Ducharme Pierre C.	"	Q	Denis F. X.	"	Q
Lavallee J. H.	"	Q	Verreault Pamphile G.	"	Q
Coulombe Flavien	St. Felicien,	Q	Hamel Edouard	St. Jeanne,	Q
Paradis L. A.	St Ferdinand d'Halifax,	Q	Archambault Edouard	St Jerome (Terrebonne),	Q
Pelletier Thos.	St Flavie,	Q	Lachaine L. de G.	"	Q
Desaulniers J. H.	Ste Flore,	Q	Parent J. E.	"	Q
Gigault G. A.	Ste Foye,	Q	Petit Pierre F. E.	"	Q
Guay L. A. W.	St Francois,	Q	Sigoum J. H. A.	"	Q
Gendron J. S.	"	Q	Gagnon J. E.	St. Jerome de Matane,	Q
Martineau Arthur	"	Q	Gagnon Jos. Pierre	St Jerome du Lac St Jean,	Q
Rousseau L. D. E.	"	Q	Guera d Joseph G.	"	Q
Angers Phil	St Francois (Beauce)	Q	Gosselin Valere	St Joseph (Beauce),	Q
Fortier M. F. G.	"	Q	Taschereau Eugene	"	Q
Blondin L. M.	St Francois du Lac,	Q	Roy C. F. H.	St Joseph de Chambly,	Q
Leveillé G.	"	Q	Pelletier P. J. S.	Jt. Joseph d'Ely,	Q
Archambault J. E.	St Gabriel de Brandon,	Q	Lemyre J. A. F.	St, Joseph de Maskinongé,	Q
Champagne Hector	"	Q	Barrette P. A.	St. Jovite,	Q
Mireault Joseph A.	"	Q	Blondin, L. O.	"	Q
Boileau G.	St Genevieve,	Q	L'Heureux Louis A.	St. Jude,	Q
Chauret J. A.	"	Q	Lapierre Nap. Paul.	St Julio,	Q
Libersan Albert Z.	"	Q	Archambault G. A.	St. Julien,	Q
Trudel David T.	"	Q	Chapdelaine Emile M.	St. Justin,	Q
Chaparon J. A. E.	St. Georges,	Q	Desaulniers L. L.	St. Lambert,	Q
Lavoie Jean J.	"	Q	Crevier Phileas	St. Laurent,	Q
St. Jorre M. A.	St. Georges de Cacouna,	Q	Theoret, J. A.	St Laurent,	Q
Pigeon J. A. A.	St. Georges d'Henryville,	Q	Tassé Chas. Stanislas	"	Q
Brien Louis A.	St. Germain de Grantham,	Q	Guerard J. G.	St. Laurent (Montmorency),	Q
Roy Louis N.	"	Q	Picher Jos	St. Leonard,	Q
Houle Jos.	St. Gertrude,	Q	Brunelle L. A.	St Lib ire,	Q
MacKenzie E. Murdock	St. Gervais,	Q	Martin Wolfred.	St. Louis de Gonzague,	Q
Polrires Jos. A.	St. Gregoire,	Q	Bernard P. S.	St Louis de Lotbiniore,	Q
Pion J. O.	St. Gregoire,	Q	Lemay Chas. Ant.	"	Q
Touzin J. T.	St. Guillaume,	Q	Bourque Jean	Ste. Luce d'Israeli,	Q
Vanasse, L. D. T.	"	Q	Beauchesne J. A. H.	St. Ludger,	Q
Collette Victor Louis	St. Helene,	Q	Savard Louis.	St. M'elo,	Q
Bourget Francois	St. Henri Levis,	Q	Doyer Narcisse	St. Marguerite,	Q
Charette J. A.	St. Henri de Mascouche,	Q	Larue, D. E. E.	St. Marie (Beauce),	Q
Desrochers J. E. M.	St. Hilaire,	Q	Theberge G. S.	"	Q
Rivard, Zacharie	St. Honore,	Q	Theberge Pierre.	"	Q
Gelinias Pierre H.	St. Hughes,	Q	Jeannotte A.	St. Marthe,	Q
Melancon G. A.	"	Q	Lavoie Jos. W.	St Martin	Q
Bazinier J. P.	St. Hyacinthe,	Q	Bernard P E H.	St Martine,	Q
Bernier M. E. (hon)	"	Q	Lafond J. J. H.	"	Q
Boisseau F. X. A.	"	Q	Bayeur Joseph M	St. Maurice,	Q
Borduas Francois	"	Q	Coupal M	St. Michel Archange,	Q
Carreau S	"	Q	Veronneau Louis Philippe,	"	Q
Chabot Elzear	"	Q	St. Michel d'Yamaska,	Q	
Cormier J. L. Z.	"	Q	Leonard Damase	"	Q
Desautels J. C.	"	Q	Belanger E. L.	Ste Monique (Nicolet),	Q
Deschenes Robt	"	Q	Gravel J. A.	St. Narcis,	Q
Fontaine M. E. R.	"	Q			
Guertin J. O.	"	Q			

Dagneault Louis	St. Nazaire,	Q	Rousseau G. P.	St. Zephirin,	Q
Gagnon Paul	St. Octave de Metis,	Q	Rousseau Edmond	"	Q
Duhamel R. H.	St. Ours,	Q	Thomas Chas M.	Stanstead,	Q
Richard J. M.	"	Q	Tartre C. U. R.	Sutton,	Q
Blanchet Jos. A.	St. Paschal,	Q	Jolicoeur J. O.	Terrebonne,	Q
Ouellet A. G.	"	Q	Mathieu E. S.	"	Q
Marion Joseph	St. Paul l'Ermite,	Q	Carreau J. C. Ernest	Thetford Mines,	Q
Pois Joseph	St. Paulin,	Q	Vachon J. A. O.	"	Q
Bathalon J. B. S.	St. Pie,	Q	Lessard Francois Victor	Tingwick,	Q
Dufresne Henry R.	St. Pierre les Becquets,	Q	Gagnon Alex	Trois Pistoles,	Q
Raymond Napoleon	St. Placide,	Q	Michaud J. M.	"	Q
Gladu Louis Adolphe	St. Polycarpe,	Q	Rousseau H.	"	Q
Quimet J. R.	"	Q	Boulais J. E. F.	Trois Rivières,	Q
Fournier Pierre C. A.	St. Raphael,	Q	Desilets Pierre	"	Q
Bergeron J. H. P.	St. Raymond,	Q	Hubert P. L.	"	Q
Panet Ed. A.	"	Q	Lebrun J. V. A.	"	Q
Bedard Chas.	St. Remi,	Q	Lemire J. O. A.	"	Q
Bedard L. A.	"	Q	Lord L. A.	"	Q
Goyer Antoine	"	Q	Mercier L. R.	"	Q
Lafortune J. H.	St. Roch de l'Achigan,	Q	Normand T. E.	"	Q
David V. S.	St. Roch de Richelieu,	Q	Tranchemontagne J. B.	"	Q
Dupont Pierre Themistocle,	"	Q	Dupré L. P.	Upton,	Q
St. Roch des Aulnaies,	Q		Boyer Jos. I.	Valleyfield,	Q
Bourassa Joseph B.	St. Romuald,	Q	Boyer L. J.	"	Q
Lemieux Jean Theo.	"	Q	Boyer Zephirin	"	Q
Filiatrault Jos. D.	St. Rose,	Q	Joron Remi S., N.P. ..	"	Q
Legault Alph. Alex.	"	Q	Lavimodiere C. A.	"	Q
Savard Jos	St. Sauveur,	Q	Beaudry E. A.	Varembes,	Q
Chevalier Joseph,	"	Q	Bissonnette L. J. A.	"	Q
St. Sauveur, Terrebonne Co.,	Q		Langlois Jos. V.	"	Q
Forest Narcisse	St. Scholastique,	Q	Favréau J. B. A.	Vaudreuil,	Q
Fortier Vincent	"	Q	Legault Jos. Nap.	"	Q
Hetu L. E.	"	Q	Chagnon E. E.	Vercheres,	Q
Godreau Jos. E.	St. Sebastien,	Q	Busiéris Ulysse	"	Q
Chabot J. E.	St. Stanislas,	Q	Poirier J. N.	Victoriaville,	Q
Germain L. Eugene.	"	Q	Guay A. E.	Ville Marie,	Q
Laplante Pamphile.	St. Stanislas de Kostka,	Q	Lafond Z. A. C.	"	Q
Payeur Joseph A.	St. Sylvestre,	Q	Piche Timothee	Wakefield,	Q
Vigneau G. E.	St. Thecle,	Q	Laliberte J. Edgar.	Warwick,	Q
Mondou J. A. A.	St. Thomas de Pierreville,	Q	Bourgeois J. M.	Waterloo,	Q
Arbours Theodule.	St. Therese de Blainville,	Q	De Varennes Hon. E. F.	"	Q
Desjardins Jos. E.	"	Q	Gingras Joseph	"	Q
Desroches David.	"	Q	Jodoin Louis	"	Q
Gingras J. D. A.	St. Thomas de Shanley,	Q	Perras Joseph A.	"	Q
Joannette Victor	St. Timothee,	Q	Tartre Jos. R.	"	Q
Ceroufel Eug. S.	St. Tite,	Q	Bourget J. H.	Weedon,	Q
Moussette Wilbrod.	"	Q	Cormier Felix	Wickham,	Q
Soulard E. N.	St. Ubald,	Q	BEGIN J. A.	Windsor Mills,	Q
Poupard J. B.	St. Urbain,	Q	Begin Ed. H.	"	Q
Labreche M. E.	St. Valerien de Milton,	Q	Rogan G. A.	Winnipeg	Q
Bolduc Jos. (Hon.)	St. Victor de Tring,	Q	Belisle L. N.	Wooton,	Q
Guertin J. E.	St. Vital de Lambton,	Q	Bellemare H. A. O.	Yamachiche,	Q
Lebrun David	St. Wencelas,	Q	Milot Jules	"	Q

Bailiffs in the Province of Quebec.

DISTRICTS.

1. Arthabaska ; 2. Beauce; 3. Beauharnois; 4. Bedford; 5. Chicoutimi; 6. Gaspé; 7. Ibergville; 8. Joliette; 9. Kamouraska; 10. Montmagny; 11. Montreal; 12. Ottawa; 13. Pontiac; 14. Quebec; 15. Richelieu; 16. Rimouski; 17. Saguenay; 18. St. Francois; 19. St. Hyacinthe; 20. Terrebonne; 21. Trois Rivières.
- | | | | | | | | |
|----------------------|----------|------------------------------|---|------------------------------------|---------------------|----------------|---|
| Boisclair J. B. | 19. | Acton Vale, | Q | 12 See Ange Gardien, Ange Gardien, | Q | | |
| Laliberte Chas. | " | " | Q | Theriat Pierre ..3. | Anse aux Grisfonds, | Q | |
| Painchaud C. F. | 6. | Iles de la Madelene, Amherst | Q | Perron David | 3. | Anse St. Jean, | Q |
| Pineau F. R. | 16. | Amqui, | Q | Brunelle L. B. | 1. | Arthabaska, | Q |
| Pageot J. E. | 14. | Ancienne Lorette, | Q | Beaudet L. P. | " | " | Q |
| Fisher J. | 12. | Angers, | Q | Garneau Hercule | " | " | Q |
| | | See St. Joseph, Alma, | Q | Giroux J. Isaie | " | " | Q |

Leblanc Edouard	Arthabaska, Q	Merrill Chas.	Coaticook, Q
18 Address Huberdeau, Arundel, Q		Paige Warren	18 Compton, Q
18 Address St. Malo, Auckland, Q		Bonin Louis N.	11 15 Contrecoeur, Q
Martin A.	6 Avignon, Q	Flaws Geo.	18 Cookshire, Q
Charbonneau L. Z.	18 Aylmer, Q	11 Address Montreal, Cote des Neiges, Q	
Cole H.	"	11 Address Coteau Landing, Coteau du Lac, Q	
Perrier E.	"	11 Address Coteau Landing, Coteau Station, Q	
Potvin Adjutor	5 Bagotville, Q	Themens W.	11 Coteau Landing, Q
Cimon Edouard	17 Baie St. Paul, Q	Ferland P.	6 Cross Point, Q
Bouchard G.	"	13 See Fort Coulonge, Q	
Lavoie E.	"	15 See St Zephirin de Courval, Q	
Tremblay Elzear	"	Lee Ed. Augustus	1 18 Danville, Q
Joucas J.	6 Basin de Gaspé, Q	Benoit Z.	14 Deschambault, Q
Cossette Phillipe	21 Batiscan, Q	Paquin J. G.	"
Herbert Moise	3 Beaucharnois, Q	Baldwin Ozro	18 Dixville, Q
Giroux F. I.	14 Beauport, Q	16 Address Montreal, Dixie, Q	
McAller John	4 Bepford, Q	Morin J. A.	18 D'Israeli, Q
Anger I.	11 Belœil, Q	11 Address Montreal, Dorval, Q	
17 See Bon Désir, Bergeronnes, Q		Kennedy David	6 Douglstown, Q
Simard E.	"	Hébert Alphonse	1 Drummondville, Q
Olivier Olivier	8 Berthierville, Q	Bousquet C. H.	"
Dorval Y.	"	Gauthier V.	"
Laquex G.	1 Black Lake, Q	Lafontaine A.	"
21 See Ste. Marie, Blandford, Q		Newman Alex.	18 Dudswell, Q
Mooney Iro E.	18 Bolton Centre, Q	Morris Wm F.	3 Dundee, Q
6 See Petit, Bonaventure, Q		Lewis H. H.	4 Dunham, Q
Simard Elzear	17 Ben Désire, Q	Rogers Chas F.	18 Eaton Corner, Q
11 Address Longueuil, Boucherville, Q		Desgagne Oscar	"
11 See St. Joseph de Berdeaux, Q		Bouchard Joseph	17 Les Eboulements, Q
11 Address Montreal, Bout de L'Isle, Q		Bissonnette P. P.	4 Valcour, Ely, Q
18 See St. Frs. Xavier, Brampton, Q		Fournier Jacques	4 Farnham, Q
13 Address Pontiac, Bristol, Q		Jasmin J. B.	"
Dumond Jules	Bromptonville, Q	Portelance P. A.	"
11 Address Laprairie, Brosseau Station, Q		Frost J.	13 Fort Coulonge, Q
2 See St. Pierre de Broughton, Q		Preston J.	6 Fox River, Q
Lemieux N.	1 Broughton West, Q	14 See St Philomene de Fortierville, Q	
Bolane Wm	13 Bryson, Q	Rowe Asher	3 Franklin Centre, Q
Charbonneau A. H.	12 Buckingham, Q	Baillarge W.	3 Fraserville, Q
Jummings J. C.	"	Chamberland A. V.	9 " "
Roy David	"	Doucet E. A.	"
Larwell D. C.	"	Dupuy Paul C.	"
Wright Robert W.	18 Bury, Q	Frenette J. B. E.	"
Talbot J. R.	6 Cap (petit), Q	Fortier T.	"
Delsile Samuel	14 Cap Santé, Q	Martin P. E.	"
Guimond Maxime	10 Cap St Ignace, Q	Vanantwerp C. B.	4 Frelighsburg, Q
Seymour Wm.	6 Cape Cove, Q	Joncas Joseph	6 Gaspé Basin, Q
Smith J.	6 Cape Rosier, Q	Charette Théodule	12 Gatineau Point, Q
11 Address St. Laurent, Cartierville, Q		Cousineau Jos.	"
Danis Alex.	11 Cascades Point, Q	Latour Thomas	12 Gracefield, Q
11 Address St. Constant, or Montreal, Caughna- waga, Q		Paré O. N.	4 Granby, Q
Morrisette V. O.	16 Causapsca, Q	Myles G.	6 Grand Pabos, Q
Paquet Léon	16 Cedar Hall, Q	Beaudin T. A.	6 Grand River, Q
11 Address Longueuil, Chambly, Q		Lebreux Alex.	"
Lapointe Ephrem	5 Chambord, Q	Cousineau J. A.	Grand'Mere, Q
Fitzpatrick James	13 Chapleau, Q	Grenier M. A.	"
Smith Edward	"	St Cyr J. A.	"
6 See St. Charles de Chaplau, Q		18 See St Ferdinand de Halifax, Q	
Gravel Ed.	14 Chateau Richer, Q	Verville J. A.	18 North Ham, Q
Gravel Jos. O.	"	Lamoureux R.	18 South Ham, Q
Donaldson John	20 Chatboro, Q	Hudon Augustin	5 Hebertville, Q
Bryerton J.	20 Chatham, Q	Lussier Etienne	3 Hemmingford, Q
Chevrier G. H.	12 Chenneville, (Canton Hart), Q	Brault L.	7 Henryville, Q
8 See St. Theodore de Chertsey, Q		14 See Ste Jeanne de Henville, Q	
Grenon Narcisse	5 Chicoutimi, Q	Guilbault Eug.	20 Huberdeau, Q
Ouellet E. D.	"	Groulx Onésime	" Hull, Q
Couture O.	"	Dieudonne Lorain	3 Huntingdon, Q
Fournier Camille	"	McGinnis P.	"
Gagné Wilfrid	"	Lorain I.	"
Menard Séraphin	"	Rousseau Th.	1 Inverness, Q
Ledoux Joseph	4 Clarenceville, Q	Hogg McK. Thomas	Iles aux Coudres, Q
18 See St. Edwidge of Clifton, Q		Desbiens M.	"
Beaufort Jos. S.	18 Coaticook, Q	Gauvreau Ernest	9 Isle Verte, Q
Belisle John F.	"	Painchaud C. F.	Iles de la Madeleine, Q
Humphrey Sylvender B.	"	14 See St Ambroise de la Jeune Lorette, Q	
Lebourveau Stewart C.	"	Ouellet Paul	6 Jersey Cove, Q
		Dugas Camille	8 Joliette, Q
		Levesque Alfred	"

Martel Jean Louis.....	Jollette,	Q	14 See Notre Dame des Anges de Montambau,	Q
Lavallee L. A.....	"		Poulin L. R.....	12
Page J. Onesime.....	"		Gobeil P. C.....	10
Tremblay Jos. N.....	5	Jonquieres,	Paquet E.....	10
Dugal C. F.....	9	Kamouraska,	Bachand Louis E.....	11
Duval Mederic.....	8	Kilkenny,	Balthazar Chs.....	11
Beals Chas. W.....	4	Knowlton,	Bernard J. E.....	"
Girard Guillaume.....	12	Labelle,	Bienjonetti Pierre.....	"
Martiniere Napoleon.....	"		Bisson Louis.....	"
	Address Montreal, Lachine,	Q	Bissonnette J. A.....	"
Lavigne Jos.....	20	Lachute,	Bourassa Jos H.....	"
Corbiere P. E.....	7	Lacolle,	Breux Jos.....	"
Fournier G.....	2. 18	Lake Megantic,	Caisse Jos.....	"
Legault Alphonse.....	"	Lake St. Mary,	Champagne F. X.....	"
	2 See St Vital de Lambton,	Q	Cinq-Mars H. A.....	"
Moncion Léonard.....	12	L'Ange Gardien,	Coutlee O. C.....	"
Fournier J.....	"	"	Coutu J. E.....	"
Guay N.....	"	L'Annonciation,	Dandurand Moise.....	"
Therault P.....	6	L'Anse au Griffon,	Danereau J. T.....	"
Lefebvre Edouard.....	12	"	Daoust Olivier.....	"
Vincent Henri.....	118	La Patrie,		
Thomas Alph.....	11	Laprairie,	Decelles & Durocher, Cour	
Dorion J. O.....	8	L'Assomption,	Superieure et d'Appel, Huissiers	
Gauvin Michel.....	"	"	du Sherif,	"
Gilpin J.....	"	Lac Otter,	Desmarais J. E.....	"
Cyr Louis.....	"	Laurentides, St Lin,	Desroches Ed.....	"
Mireault Onezime.....	"	"	Fortier Damase.....	"
Perreault J. A.....	"	"	Gravel Leopold.....	"
Leclerc A.....	"	Launzon,	Jetté C. T.....	"
Leclerc M.....	"	"	Johnston James.....	"
Cloutier Moise.....	1	L'Avenir,	Lafontaine G. A.....	"
Bouchard J.....	17	Les Eboulements,	Lajeunesse H.....	"
Desgagnes O.....	"	"	Lalonde Arist.....	"
Neault U.....	21	Les Piles, (St Jacques)	Lavery J. S.....	"
Fournier Jean N.....	"	Levis,	Marson S. C.....	"
Clouthier F. H.....	10	L'Islet,	Mayer Jos.....	"
Keays John.....	6	Little Pabos,	Patenaude P.....	"
Poirier F.....	"	Little Bonaventure,	Paule J. X.....	"
Jones Henry.....	6	Little River West,	Perrault J. B.....	"
Durocher J. E.....	11	Longueuil,	Proulx Thos. N.....	"
	11 Address Montreal, Longue Pointe	Q	Renaud J. Arthur.....	"
Caron Gabriel.....	21	Louiseville,	Racette L. J. A.....	"
Caron Louis Denis.....	"	"	Roy Joseph.....	"
Gendron Arthur.....	18	Magog,	St. Amour D. A.....	"
Gingras René.....	"	"	St Amour Nap.....	"
	11 See Montreal, Maisonneuve,	Q	St George Alph.....	"
Brassard Severin.....	17	Malbaie, St Etienne,	Smith Wm. W.....	"
Chapelon L. Adelmarr.....	"	"	Tessier A. L.....	"
Gagnon Thomas.....	"	"	Trudeau J. B.....	"
Guay Louis.....	"	"		
Vardon T. L.....	6	Malbay	11 Address Longueuil, Montreal South,	Q
	14 See Ancienne Lorette,	Q	11 Address Montreal, Montreal West,	Q
	14 See St Ambroise de la Jeune Lorette,	Q	Moisan T. T.....	7
	14 See St Louis de Lotbiniere,	Q	Lebel J. A.....	6
Vardon T. S.....	"	Malbaie,	Jessop Thos.....	6
Nault A. J.....	12	Maniwaka,	Robertson J.....	6
Lacoste J.....	"	"	Lacerte Hamilton.....	21
Fitzgerald T.....	"	"	Rousseau P. J. O.....	21
Bowen C.....	4	Mansonville,	Jetté Roch.....	12
Bishop Wm.....	18	Marbleton,	Simard Stanislas.....	5
Fournier A.....	18	Marieville,	Trotter Lucien.....	"
Douglas R.....	"	"	Verville Jos.....	18
Delongchamp Frs.....	8	Mascouche,	Petitclerc E.....	N. D. des Anges de Montambau,
Plang Denis.....	21	Maskinongé, Pont,	Blondin Jos. A.....	14
Gauthier Camille.....	12	Masson,	Ouellette Elzear.....	9
Sabourin E.....	"	"	Roger Jules.....	12
	5 See St Louis de Metabetchuan,	Q		Address Montreal, Notre Dame de Grace,
Charest Vital.....	16	Matane,	Morissette J. Omer.	14
Dionne O.....	"	"		Portneuf,
Joncas J. C.....	"	"		
Fournier G.....	18	Megantic Lac,	Dagneault J. T.....	6
Labbe A. N.....	16	Metis, Grand	Charest Jos.....	20
Hudon E.....	"	"	Prent Louis.....	3
Cox G. A.....	18	Melbourne Upper,	Gilpin Joseph.....	13
Tremblay J. E.....	17	Mille Vaches,		6 See (Grand), Pabos,
Hudon J. B.....	5	Missassini,		6 See Petit Pabos,
Thibault Stanislas.....	61	Mont Louis	Hillman J. Arthur.....	12
	12 See St Girard de Montarville,	Q	Tetreau Paul.....	"
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Furlong Michael G	"	Jones Thos .. 6	St. Adelaide de Pabos, Q
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Dery Pierre. 6	Petite Vallée, Q	Demers G. 14	"
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Clermont Alfred. 11.	Pointe aux Trembles, Q	Miclaud A. 5	St André, Q
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Vidal George Octave	"	Drainville Wilfrid. 8	St. Barthelemy, Q
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Grignon Theodore.	5	St. Jerome,	Q	Godbout Frank.	2	St Prosper de Watford,	Q
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Guerin dit St Hilaire O.	14	St Joachim,	Q	Leonard Joseph.	11	St Rose,	Q
Lanier Arthur.	7	St Johns,	Q	Brazeau Moise	20	St Scholastique,	Q
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Massé P.				Gauthier Henri	21	St. Severin des Proulx-	Q
Chiche N.		St Joseph,	Q			ville,	Q
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Nadeau V.				Levesque Ulric.	20	St Sophie,	Q
Michaud Benjamin.				Monfette Prudent.	21	St Sophie de Leverd,	Q
	11	Address Montreal, St Joseph de Bourdeaux,	Q	Theffault J.	21	St Stanislas de la	Q
	20	Address Terrebonne, St Joseph du Lac,	Q			Riviere des Envas,	Q
	5	St Joseph d'Alma,	Q	Payer Joseph.	14	St Sylvestre,	Q
Verreau Gedeon.				Girard J.	8	St Theodore, Chertsey,	Q

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ayeur Dolphis	20	Ste Therese de Blain-	Q	Leveque Joseph A.....	9	Trois Pistoles,
		ville,	Q	Paradis Louis		
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14 Address Quebec,		St Tite des Caps,	Q	Cox G A	13	Upper Melbourne,
Lambert Telephone	21	Ste Ursule,	Q	Bissonnette P E	4	Valcourt (Ely.)
10 See Montmagny,		St Valier,	Q		11 Address Montreal	Valois,
7 See Ibterville,		St Valentin,	Q	Desparois Paul	3	Valleyfield,
Guimond L	11	St Vincent de Paul,	Q	Lefebvre Alfred		
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alonde Frs	11	St Zotique,	Q	Langlois Charles J	15	Varennes,
oté L. P.	17	Sept Iles,	Q	Vinet J. G. V	11	Vaudreuil,
helps H. G.	4	Stanbridge East,	Q	Desmarais O	15	Vercheres,
riggs W. H		"	Q		11 Address Montreal,	Verdun,
Heureux Pierre	8	Stanford,	Q		11 Address Montreal,	Village Turcot,
	18 See St. Francois,	Stanstead,	Q	Laperriere Henri	13	Ville Marie,
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towell J. M	4	Sutton,	Q	14 See Notre Dame de la Victoire,		Villeray,
ilbault C W	4	"	Q		11 Address Montreal,	Ville St Louis,
oisvert Jos. A	4	Sweetsburg,	Q	St George-Alp. P	11	Ville St Paul,
cott J E		"	Q	Taggart John	12	Wakefield,
Pickel T. R		"	Q	Brunette Pierre	1	Warwick,
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Ingersoll, Ont.	Port Essington, B. C.	

Agencies in Havana, Galiano St., Caibarien, Camaguey, Cardenas Cienfuegos, Manzanillo, Matanzas, Mayari, Sagua and Santiago de Cuba, Cuba; San Juan, Porto Rico; New York City (68 William Street.)

— CORRESPONDENTS. —

GREAT BRITAIN—Bank of Scotland. FRANCE—Credit Lyonnais. GERMANY—Deutsche Bank. SPAIN—Credit Lyonnais. CHINA AND JAPAN—Hong Kong and Shanghai Banking Corporation. NEW YORK—Chase National Bank. BOSTON—National Shawmut Bank. CHICAGO—Illinois Trust and Savings Bank. PHILADELPHIA—Philadelphia National Bank. SAN FRANCISCO—First National Bank. BUFFALO—Marine National Bank of Buffalo. AUSTRALASIA—Bank of New South Wales.

SUCCESSION DUTY ACTS

OF THE

VARIOUS PROVINCES OF CANADA.

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ONTARIO

ONTARIO SUCCESSION DUTY ACT

7 Edw. VII, chap. 10.

AN ACT TO AMEND AND CONSOLIDATE THE LAW RELATING
TO THE PAYMENT OF SUCCESSION DUTY.

(Assented to 20th April, 1907.)

His Majesty, by and with the advice and consent of the
Legislative Assembly of the Province of Ontario, enacts as
follows:—

1. **Short title.**—This Act may be cited as “The Succession
Duty Act.”

2. **Application of Act.**—For the purpose of raising a revenue
for Provincial purposes, save as is hereinafter otherwise expressly
provided, there shall be levied and paid for the use of the Pro-
vince a duty at the graduated rates hereinafter mentioned upon
all property which has passed on the death of any person who
has died on or since the 1st day of July, 1892, or passing on the
death of any person who shall hereafter die, according to the fair
market value of such property at the date of the death of such
person.

3.—(1) **Interpretation.**—Where the following words and ex-
pressions occur in this Act they shall be construed in the manner
hereinafter mentioned unless a contrary intention appears:—

(a) **“Passing on the death.”**—The words “passing on the
death” as meaning passing either immediately on the death or
after an interval either certainly or contingently and either
originally or by way of substitutive limitation;

(b) **“Property.”**—“Property” as including real and personal
property of every description and every estate and interest therein
capable of being devised or bequeathed by will or of passing on
the death of the owner to his heirs or personal representa-
tives;

(c) **“Interest in expectancy.”**—“Interest in expectancy” as
including an estate, income or interest in remainder or re-
version and any other future interest whether vested or con-
tingent but not as including a reversion expectant on the deter-
mination of a lease;

(d) **“Executor.”**—“Executor” as including administrator,
trustee, guardian, committee or other person seized or possessed of
or entitled to any property in a fiduciary capacity;

(e) **“Treasurer.”**—“Treasurer” as meaning the Treasurer of
the Province of Ontario;

(f) **“Child.”**—The word “child” as including any lawful child
of the deceased or any lineal descendant of such child born in law-
ful wedlock or any person adopted while under the age of twelve
years by the deceased as his child or any infant to whom the
deceased for not less than five years immediately preceding his
death stood *in loco parentis* or any lineal descendant of such
adopted child or infant as aforesaid born in lawful wedlock;

(g) **"Aggregate value."**—The words "aggregate value" as meaning the value of the property after the debts, encumbrances and other allowances authorized by section 4 of this Act are deducted therefrom, and for the purposes of determining aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included;

(h) **"Dutiable value."**—The words "dutiable value" as meaning the value of the property after the debts, encumbrances and other allowances and exemptions authorized by this Act are deducted therefrom. R. S. O. 1897, c. 24, s. 2; 5 Edw. VII. c. 6, s. 3.

4. Allowances made in computing dutiable value.—In determining "dutiable value" the value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Surrogate Court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made:—

(a) **No allowance to be made for certain debts and expenses of administration.**—For any debts incurred by the deceased or encumbrances created by a disposition made by him unless such debts, or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his estate; nor

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; nor

(c) More than once for the same debt or encumbrance charged upon different portions of the estate; nor

(d) Save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime. 5 Edw. VII. Chap. 6, s. 3.

5. Exemptions.—No duty shall be leviable:—

(1) **Estates not exceeding \$10,000.**—On any estate the aggregate value of which does not exceed \$10,000;

(2) **Charitable bequests.**—On property devised or bequeathed for religious, charitable or educational purposes to be carried out in Ontario or by a corporation or a person resident in Ontario, or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable;

(3) **Property passing to certain persons not over \$50,000.**—On property passing by will, intestacy or otherwise to or for the use of a grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the value of the property of the deceased does not exceed \$50,000;

(4) **Life Insurance not exceeding \$5,000.**—On any moneys received under a contract of insurance effected by any person on his life payable to any of the persons mentioned in subsection 3 of this section when the aggregate of such insurance or insurances does not exceed \$5,000.

(5) **To one person not over \$300.**—Where the whole value of any one person does not exceed \$300 the same shall be exempt from

payment of the duty imposed by this Act. R.S.O. 1897, c. 24, s. 3; 1 Edw. VII. c. 8, s. 4; 5 Edw. VII. c. 6, s. 6.

6.—(1) Description of property liable to duty.—Save as aforesaid the following property shall be subject to succession duty to be paid for the use of the Province over and above the fees paid under *The Surrogate Courts Act*:—

(a) **Property in Ontario or owner domiciled in Ontario.**—All property situate in Ontario and any income therefrom whether the deceased person owning or entitled thereto was domiciled in Ontario at the time of his death or was domiciled elsewhere and all moveable or personal property locally situated out of Ontario and any interest therein where the owner was domiciled in Ontario at the time of his death;

(b) **Property transferred in contemplation of death.**—All property, situate as aforesaid, or income therefrom voluntarily transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, bargainor, vendor or donor of made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income;

(c) **Donations mortis causa, etc.**—Any property, situate as aforesaid, taken as a *donatio mortis causa* or taken under a disposition purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise which shall not have been *bona fide* made twelve months before the death of the deceased, or property, situate as aforesaid, taken under any gift, when ever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

(d) **Property vested jointly with interest to survivor.**—Any property, situate as aforesaid, which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement with any other person;

(e) **Property passing under settlement, etc.**—Any property, situate as aforesaid, passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by deed or other instrument not taking effect as a will whereby an interest in such property or the proceeds of sale thereof for life, or any other period determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof;

(f) **Annuities, insurance, etc.**—Any annuity or other in-

terest purchased or provided by any person, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased. Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit;

(g) **Property over which decedent had power of disposal.**—Any property, situate as aforesaid, of which the person dying was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would if he were *sui juris* enable him to dispose of the property as he thinks fit whether the power is exercisable by instrument *inter vivos* or by will or both, including the powers exercisable by a tenant in tail whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

(h) **Dower and curtesy.**—Any estate in dower or by the curtesy in any land of the person so dying to which the wife or husband of the deceased becomes entitled on the decease of such person.

(2)—(a) The description of property in clauses (c) to (h) inclusive shall not be construed to restrict the generality of the description contained in clauses (a) and (b).

(b) Any property within the meaning of clauses (b) to (h) inclusive shall for all purposes of this Act be deemed to pass on the death of the deceased.

(3) **Scale of duty where property passes to grandparents, etc., and exceeds \$50,000.**—Where the aggregate value of the property exceeds \$50,000, and any property passes in manner aforesaid, either in whole or in part, to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased, the same or so much thereof as so passes (as the case may be) shall be subject to a duty at the rate on the scale as follows:

(a) Where the aggregate value exceeds \$50,000 and does not exceed \$75,000, 1 per cent.;

(b) Exceeds \$75,000 and does not exceed \$100,000, 2 per cent.;

(c) Exceeds \$100,000 and does not exceed \$150,000, 3 per cent.;

(d) Exceeds \$150,000 and does not exceed \$200,000 4 per cent.;

(e) Exceeds \$200,000, 5 per cent.

(4) **Additional duty where share of any person exceeds \$100,000.**—Provided that where the aggregate value of the property exceeds \$100,000, and the value of the property passing in manner aforesaid to any one person mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned, as follows:—

(a) Where the whole amount so passing to one person exceeds \$100,000 and does not exceed \$200,000, 1 per cent.;

(b) Exceeds \$200,000 and does not exceed \$400,000 1 1-2 per cent.;

(c) Exceeds \$400,000 and does not exceed \$600,000, 2 per cent.;

(d) Exceeds \$600,000 and does not exceed \$800,000, 2 1-2 per cent.;

(e) Exceeds \$800,000, 3 per cent.

(5) **Rate of duty where property passes to grand parents, brothers, sisters, etc.**—Where the aggregate value of the property exceeds \$10,000 so much thereof as passes to or for the benefit of any lineal ancestor of the deceased, except the grandfather, grandmother, father, and mother, or to any brother or sister of the deceased, or to any descendant of such brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister, shall be subject to a duty of 5 per cent.

(6) **Additional duty where more than \$50,000 passes to any person.**—Provided that where the aggregate value of the property exceeds \$50,000, and the amount passing in manner aforesaid to any one person mentioned in the next preceding subsection, except the grandfather, grandmother, father and mother, exceeds the amount hereinafter mentioned a further duty shall be paid on the amount so passing, in addition to the duty in the next preceding subsection mentioned as follows:—

(a) Where the whole amount so passing to one person exceeds \$50,000, and does not exceed \$100,000, 1 per cent.;

(b) Exceeds \$100,000 and does not exceed \$150,000, 1 1-2 per cent.;

(c) Exceeds \$150,000 and does not exceed \$200,000, 2 per cent.;

(d) Exceeds \$200,000 and does not exceed \$250,000, 2 1-2 per cent.;

(e) Exceeds \$250,000 and does not exceed \$300,000, 3 per cent.;

(f) Exceeds \$300,000 and does not exceed \$350,000, 3 1-2 per cent.;

(g) Exceeds \$350,000 and does not exceed \$400,000, 4 per cent.;

(h) Exceeds \$400,000 and does not exceed \$450,000, 4 1-2 per cent.;

(i) Exceeds \$450,000, 5 per cent.

(7) **Rate where property passes to other persons.**—Where the aggregate value of the property exceeds \$10,000, so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above mentioned, or to or for the benefit of any stranger in blood to the deceased save as is hereinbefore provided, shall be subject to a duty of 10 per cent.

(8) **Property brought into Ontario for administration.**—Property of a deceased person domiciled in Ontario brought into this Province by his executor or administrator for administration or distribution shall be liable to the duty hereinbefore imposed.

(9) **Proviso.—Proviso.—Proviso.**—Where any property locally situate out of Ontario or any interest therein as aforesaid shall have paid any estate, succession or legacy duty or tax elsewhere than in Ontario an allowance for the amount so paid shall be made by this Province, and the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the preceding

subsections of this section as will equal the difference between the duty payable under this Act with respect to property in Ontario and the duty or tax so paid elsewhere; Provided that allowance for any estate, succession or legacy duty or tax payable elsewhere than in Ontario shall be made under this subsection only as to any country, state or British province or possession where an allowance is made for the succession duty paid under this Act on property situate in Ontario, passing on the death of any person domiciled elsewhere than in Ontario, and the Lieutenant-Governor in Council, by Order in Council, shall have extended the provisions of this subsection as to such allowance by this Province, so as to apply to such country, state or British province or possession. Provided also that the Lieutenant-Governor in Council may revoke any such order, where it appears that the law of any such country, state, British province or possession has been so altered that it would not authorize the making of an order under this subsection.

(10) **Foreign executors, etc., not to transfer stock until duty paid.**—No foreign executor shall assign or transfer any debentures, bonds, stocks or shares of any bank or other corporation whatsoever having its head office in Ontario, standing in the name of the deceased person, or in trust for him, which are subject to succession duty until such duty is paid or security is given as required by section 7 of this Act, and any such bank or corporation allowing a transfer of any debentures, bonds, stocks or shares contrary to this section shall be liable for such duty. 62 V. (2), c. 9, s. 13

7.—(1) **Executors, etc., to file inventory, and bonds for payment of duty.**—An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or of administration to him, make and file with the Surrogate Registrar a full, true and correct statement under oath showing:

(a) A full inventory in detail of all the property of the deceased person and the market value thereof, and

(b) The several persons to whom the same passes, their places of residence, and the degrees of relationship, if any, in which they stand to the deceased;

and the executor or administrator shall, before the issue of letters probate or of administration, deliver to the Surrogate Registrar a bond in a penal sum not exceeding ten per centum of the sworn value of the property of the deceased person liable, or which may become liable, to succession duty, executed by himself and two sureties to be approved by the Registrar, conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of such executor or administrator may be found liable.

(a) The Treasurer may accept a sufficient sum as security for the due payment of any duty, for which the property may become liable, in lieu of or in addition to any other security, and he may in such event allow and pay to the executor or administrator interest thereon at a rate not exceeding three per cent. per annum until such time or times as the duty or a proportionate grant thereof is payable under this Act and no longer. (Amendment 8 Edw. VII., c. 33, s. 21).

[As to accepting policies of guarantee companies, see R.S.O. 1897, c. 220, s. 5.]

(2) **Where no executor or administrator accountable for duty.**—Every person to whom property passes for any beneficial

interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing, or the management thereof, is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the duty, and shall, within six months after the death of the deceased, or such later time as may be allowed by the Treasurer, send by registered letter to the Treasurer an account of the property, verified on oath; Provided that this subsection shall not apply to property included in the inventory mentioned in the next preceding subsection. R. S. O. 1897, c. 24, s. 5; 6 Edw. VII. c. 19, s. 11 (3).

(3) Property not disclosed on application for Probate, etc.—If at any time it shall be discovered that any property was not disclosed upon the grant of letters probate or of administration or the filing of the account, the person acting in the administration of such property and the person who is liable for the duty payable under this Act shall pay to the Treasurer the amount which, with the duty (if any) previously payable or paid on such property, shall be sufficient to cover the duty chargeable according to the true value thereof at the rates fixed by this Act together with interest thereon and shall at the same time pay to the Treasurer as a penalty a further duty of twenty-five per cent. of the duty chargeable on the value of the property not disclosed, and shall also, within two months after the discovery of the omission, deliver to the Surrogate Registrar an affidavit or account setting forth the property so not disclosed and the value thereof; in default of which he shall incur a penalty of \$10 for each day during which the default continues.

8.—(1) Proceedings when Treasurer not satisfied with valuation.—In case the Treasurer is not satisfied with the value of any property as sworn to or with the correctness of any inventory, the Surrogate Judge of the county in which the property or any part thereof subject to duty is situate shall, at the instance of the Treasurer and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs, enquire into the correctness of the inventory and as to the value so sworn to, and value any property improperly omitted, fix and settle the amounts of the debts and other allowances and exemptions, and assess the cash value of every annuity, term of years, life estate, income or other state and of every interest in expectancy as provided by this Act, and shall at the time and place mentioned in the notice or any other time and place named by him value all property at the fair market value and hear and determine all questions relative to the liability of property, the amount of duty and the persons liable therefor.

(2) Powers of judge.—The Surrogate Judge shall have all the powers of a Judge of the County Court at the trial of any action and the power to compel discovery, the production of books, papers and documents and he may with the consent of the official guardian appoint for the purposes of this Act a guardian of any infant who has no guardian.

(3) Enforcement of judgment.—The judgment of the Surrogate Judge shall have the like force and effect and be enforceable in the same manner as a judgment of the County Court.

(4) Judge may direct appraisement of property by she-

riff.—In lieu of or in addition to evidence of valuation of property the Surrogate Judge may in the first instance or at any time before judgment issue a direction to the sheriff of the county where any property is situate in respect to which duty is payable to make an appraisal of the property mentioned in the inventory or any part thereof or of any property wrongfully omitted.

(5) **Appraisement to be according to fair market value.**—When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the Surrogate Judge, or any property wrongfully omitted, at its fair market value at the date of death or at the time provided in section 12, as the case may be, and make a report in writing to the Surrogate Judge of his appraisement and of such other facts as he may deem proper.

(6) **Sheriff's fees.**—The sheriff shall be paid by the Treasurer the following fees for services performed under this Act:

\$1 for every hour up to five hours;

\$2 for every hour in important or difficult cases;

In no case to exceed \$10 per diem;

His actual and necessary travelling expenses.

9. **Valuation of annuities and limited estates.**—The value of every annuity, term of years, life estate, income or other estate and of every interest in expectancy in respect of which duty is payable under this Act, shall for the purposes of this Act be determined by the rule, method and standards of mortality and of value which are employed by the Provincial Inspector of Insurance in ascertaining the value of policies of life insurance and annuities for the determination of the liabilities of life insurance companies, save that the rate of interest to be taken for all purposes of computation under this section shall be four per cent. per annum; and the Inspector of Insurance shall on the application of any Surrogate Judge determine the value of any annuity, term of years, life estate, income or other estate or of any interest in expectancy upon the facts contained in any such application and certify the same to the Surrogate Judge and his certificate shall be conclusive as to the matters dealt with therein.

10.—(1) **Appeal from Surrogate Judge.**—The Treasurer or any other person interested, may within thirty days from the date of the judgment of the Surrogate Judge appeal to the Court of Appeal whose decision shall be final. Provided that no appeal, shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000 according to such judgment.

(2) **Costs.**—The costs of all such proceedings shall be in the discretion of the Court or Judge and shall be on the County Court scale, except the costs of an appeal which shall be according to the tariff applicable to proceedings in the Court of Appeal.

11.—(1) **Duties to be payable within 18 months from death of owner.**—The duties imposed by this Act, unless otherwise herein provided, shall be due at the death of the deceased, and payable within eighteen months thereafter, and if the same are paid within the said period no interest shall be charged or collected thereon, but if not so paid interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected, and such duties, together with the interest thereon, shall

be and remain a lien upon the property in respect of which they are payable until paid. Provided that the duty chargeable upon any legacy given by way of annuity whether for life or otherwise shall be paid in four equal consecutive annual instalments, the first of which shall be paid before the falling due of the first year's annuity and each of the three others within the same period in each of the next succeeding three years. In case the annuitant dies before the expiration of the said four years payment only of the instalments which fall due before his death shall be required. R. S. O. 1897, c. 24, s. 12 (1); 1 Edw. VII. c. 8, s. 9 (1); 6 Edw. VII. c. 19, s. 11 (8).

(a) **Extension of time for payment.**—The Lieutenant-Governor in Council, upon proof to his satisfaction that payment of the duty within the time limited by subsection 1 of this section, would be unduly onerous may, by Order in Council, extend the time for the payment to such date and upon such terms as may be deemed proper and the duty shall become due and be payable as in the said Order in Council set forth. I. Edw. VII. c. 8, s. 9 (2).

(2) **Where interest is accumulated.**—Where the whole or any part of the income or interest of any property is directed to be accumulated for any period for the benefit of any person or persons or class to whom or to any of whom at the expiration of such period such property passes or income or interest becomes payable, such property shall be deemed for the purpose of this Act as interest in possession, passing at the death of the deceased, and the duty thereon shall be payable within eighteen months thereafter.

(3) **Property subject to general power of appointment liable to duty.**—Property passing upon the death in respect to which any person is given such a general power to appoint, as is mentioned in clause (g) of subsection 1 of section 6 shall be liable to duty and the duty thereon shall be payable in the same manner and at the same time as if the property itself had been given to the donee of the power.

(4) **Certificate of discharge to be given by Provincial Treasurer.**—When the duty or any part thereof has been paid or secured to the satisfaction of the Treasurer he shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for such duty the property mentioned in the certificate; Provided the Treasurer shall not be bound to grant such certificate until the expiration of one year from the death of the deceased. R. S. O. 1897, c. 24, s. 12 (2), (3); 1 Edw. VII. c. 8, s. 9 (3).

(5) **Certificate not a discharge in case of fraud, etc.—Except as to bona fide purchaser.**—Such certificate shall not discharge any person or property from the duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property, in respect of which duty has been already accounted for; Provided that a certificate purporting to be a discharge of the whole duty payable in respect of any property included in the certificate shall exonerate from duty property in the hands of a *bona fide* purchaser for valuable consideration without notice. R. S. O. 1897, c. 24, s. 12 (4).

12.—(1) Duty on interest in expectancy.—Where the dutiable property includes any interest in expectancy the duty on such interest may be paid within the eighteen months limited by subsection 1 of section 11, and when so paid the duty shall be on the value of such interest ascertained as provided herein as at the death of the deceased.

(2) Payment of duty after time limited.—With the consent in writing of the Treasurer, the duty may be paid after the time so limited and before such interest comes into possession; but if such consent be given the duty shall then be on a value not less in any event than the value of such interest in expectancy ascertained as provided herein as at the date when the duty is paid; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

(3) Payment of duty on interest in expectancy.—The duty on any interest in expectancy, if not sooner paid, shall be payable forthwith when such interest comes into possession, in which case the duty shall be on the value ascertained as provided herein as at the date of coming into possession; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

(4) Duty on present value of income where no person entitled to present enjoyment.—Subject to the provisions of subsection 2 of section 11 where any property so passes that no person is beneficially entitled to the present enjoyment of the income or any part thereof for any term of years or other period, whether certain or uncertain, the duty shall be payable on the present value of such income or part thereof for such term or period computed as provided by section 9 and shall be payable within eighteen months after the death of the deceased.

(5) Commutation of duty.—Notwithstanding that the duty may not be payable under this section until the time when the right of possession or actual enjoyment accrues an executor or person who has the custody or control of the property, may, with the consent of the Treasurer, commute the duty which would or might, but for the commutation, become payable in respect of such interest in expectancy, for a certain sum to be presently payable, and for determining that sum the Treasurer shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and the rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

(6) Interest in expectancy to be charged with duty paid.—Where the duty on any interest in expectancy has been commuted and paid under the provisions of this section before such interest in expectancy falls into possession, the duty so paid shall be charged on such interest in expectancy and shall be repaid with interest at the rate of four per cent. per annum to the person who has paid the same by the person entitled to such interest in expectancy at the time when such interest comes into possession.

(7) Composition by treasurer for duty payable in certain cases.—Where it appears to the Treasurer that by reason of the number of deaths on which property has passed or of the complicated or contingent nature of the interests of different persons in property passing on the death, it is difficult to ascertain exactly the rate or amount of duty payable in respect of any property or

any interest therein or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Treasurer on the application of any person accountable for any duty thereon and upon his furnishing all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any duty payable in respect of the property or interest and the various interests therein or any of them assess such sum on the value of the property or interest as having regard to the circumstances appears proper and may accept payment of the sum so assessed in full discharge of all claims for duty in respect of such property or interest and shall give a certificate of discharge accordingly.

13. Extension of time for the payment of duty.—Upon the application of any person liable for the payment of the duty the Surrogate Judge may from time to time on notice to the Treasurer and for just cause shown make upon such terms as he may deem proper an order extending the time fixed by this Act for payment thereof for any period in the aggregate not exceeding one year or with the consent of the Treasurer for a longer period, but, unless the Judge otherwise orders the duty shall nevertheless bear interest at the rate of five per centum per annum from the day upon which such duty might have been paid without interest. (Amended 8 Edw. VII., c. 33, s. 21).

14. Administrators, etc., to deduct duty before delivering property.—Any executor having in charge or trust any estate, legacy or property subject to duty shall deduct the duty therefrom, or collect the duty thereon from the person entitled thereto, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. R. S. O. 1897, c. 24, s. 14.

15. Persons liable to duty may raise same by sale, etc.—Any person authorized or required to pay the duty in respect of any property shall for the purpose of paying such duty or raising the amount of the duty when already paid, have power whether the property is or is not vested in him, to raise the amount of such duty and any interest and expense properly paid or incurred by him in respect thereof by sale mortgage or lease of so much of the property as may be necessary for such purpose.

16. Duty to be paid to Treasurer.—Every sum of money retained by an executor or paid into his hands for the duty on any property, shall be paid by him forthwith to the Treasurer, or as he may direct. R. S. O. 1897, c. 24, s. 16.

17. Refunding duty upon subsequent payment of debts.—Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, if such duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid. R. S. O. 1897, c. 24, s. 17.

18. Fees of Judges and Registrars.—The judges and Registrars of the several Surrogate Courts and solicitors practising therein shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them for the like services under and by virtue of *The Surrogate Courts Act* and

the Surrogate Court rules. R. S. O. 1897, c. 24, s. 21; 6 Edw. VII., c. 19, s. 11 (9).

19.—(1) Rev., stat. c. 59.—Recovery of succession duties by action.—Any duty payable under this Act shall be recoverable with full costs as a debt due to His Majesty from any person liable therefor by action in or on summary application to any court of competent jurisdiction. 62 V. (2), c. 9, s. 1.

(2) Matters to be determined by High Courts in action.—The High Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount of such duty and the time or times when the same is payable, and may itself or through any referee exercise any of the powers conferred upon any officer or person by the said sections 8 to 10. 62 V. (2), c. 9, s. 2.

(3) Action may be brought before time for payment of duty.—An action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived, subject to the discretion of the court as to costs. 62 V. (2), c. 9, s. 3.

(4) Production of documents, examination of witnesses, etc.—In every such action His Majesty's Attorney-General shall have the same right either before or after the trial to require the production of documents, to examine parties or witnesses or to take such other proceedings in aid of the action as a plaintiff has in an ordinary action. 62 V. (2), c. 9, s. 4.

20. Lieutenant-Governor in Council may make regulations.—The Lieutenant-Governor in Council may make rules and regulations for carrying into effect the provisions of this Act, and such rules and regulations shall be laid before the Legislative Assembly forthwith, if in session at the date of such rules and regulations, and if not then in session such rules and regulations shall be laid before the Assembly within the first seven days of the session next after the same are made. R. S. O. 1897, c. 24, s. 22.

21. Rev. Stat. Chap. 24 repealed.—Except as to the liability for duty of estates of persons dying before the commencement of this Act and as to the amount of duty payable in respect thereof, *The Succession Duty Act* and amendments thereto are repealed.

Statute Law Amendment Act, 1908. 8 Edw. VII., c. 33, s. 21. (Amending Secs. 7 and 13 of the Ontario Succession Duty Act, also providing as follows:

(3) Where duty is claimed on any land or money secured by mortgage or charge upon land, the Treasurer may cause to be registered in the proper registry office, or in the proper office of land titles if the land is registered under *The Lands Bill Act*, a caution claiming duty in respect of such land, mortgage, or charge by reason of the death of the deceased, and the land, mortgage, or charge shall upon such registration be subject to the lien of the Crown for duty, but nothing herein contained shall affect the rights of the Crown to a lien independently of the said caution.

QUEBEC

QUEBEC SUCCESSION DUTIES ACT

6 Edw. VII, chap. 11.

An Act amending and consolidating the act respecting Succession duties.

(Assented to 9th March, 1906.)

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

1. Section XVIIIa of chapter fifth of title fourth of the Revised Statutes, as enacted by the Act 55-56 Victoria, chap. 17, section 1, and the various Acts amending the same, are replaced by the following :

SECTION XVIIIa.

DUTIES ON SUCCESSIONS.

1191a. CITATION OF ACT.—This Act may be cited as the "Quebec Succession Duties Act."

1191b. (As amended by 7 Edw. VII., c. 14)—TAX UPON TRANSMISSIONS OF PROPERTY OWING TO DEATH.—All transmissions, owing to death, of the property in, or the usufruct or enjoyment of, moveable and immoveable property as defined in Article 1191c, shall be liable to the following taxes, calculated upon the value of the property transmitted, after deducting debts and charges existing at the time of the death :

1. *Direct Line*.—In the direct line, ascending or descending between consorts; between father or mother-in-law and son or daughter-in-law :

In estates the value of which, after deducting the debts and charges existing at the time of the death :

(a.) Does not exceed the sum of five thousand dollars, no tax shall be exigible.

(b.) Exceeds five thousand dollars, but does not exceed ten thousand dollars, on every hundred dollars of value over five thousand dollars, 1 p.c.

(c.) Exceeds ten thousand dollars, but does not exceed fifty thousand dollars, on every hundred dollars of value over five thousand, $1\frac{1}{4}$ p.c.

(d.) Exceeds fifty thousand dollars, but does not exceed seventy-five thousand dollars, on every hundred dollars of value over five thousand dollars, $1\frac{1}{2}$ p.c.

exceed one hundred thousand dollars, on every hundred dollars of value over five thousand dollars, 2 p.c.

(f.) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars, on every hundred dollars of value over five thousand dollars, 3 p.c.

(g.) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars, on every hundred dollars of value over five thousand dollars, 4 p.c.

(h.) Exceeds two hundred thousand dollars, on every hundred dollars of value over five thousand dollars, 5 p.c.

Deduction to be Out of Whole Estate.—For the purposes of clauses *a, b, c, d, e, f, g* and *h*, the sum of five thousand dollars, therein mentioned, is to be deducted out of the whole estate, and not out of the share of each beneficiary.

Additional Tax in Certain Cases.—Provided that in the case of a transmission in the direct line, ascending or descending, between consorts, between father—or mother-in-law and son—or daughter-in-law when the amount passing to any one person exceeds one hundred thousand dollars, a further duty in addition to the rates hereinbefore mentioned shall be paid on the amount so passing as follows:—

(a.) Where the whole amount so passing to one person exceeds one hundred thousand dollars, but does not exceed two hundred thousand dollars, 1 p.c.

(b.) Exceeds two hundred thousand dollars, but does not exceeds four hundred thousand dollars, $1\frac{1}{2}$ p.c.

(c.) Exceeds four hundred thousand dollars, but does not exceed six hundred thousand dollars, 2 p.c.

(d.) Exceeds six hundred thousand dollars, but does not exceed eight hundred thousand dollars, $2\frac{1}{2}$ p.c.

(e.) Exceeds eight hundred thousand dollars, 3 p.c.

2. *Collateral Line.*—In the collateral line:

(a.) If the succession devolves to the brother or sister or descendant of the brother or sister of the deceased:

If it does not exceed ten thousand dollars, 5 p.c.

If it exceeds ten thousand dollars, $5\frac{1}{2}$ p.c.

(b.) If the succession devolves to the brother or sister, or descendant of a brother or sister of the father or mother of the deceased:

If it does not exceed ten thousand dollars, 6 p.c.

If it exceeds ten thousand dollars, $6\frac{1}{2}$ p.c.

(c.) If the succession devolves to the brother or sister or descendant of the brother or sister of the grand-parents of the deceased :

If it does not exceed ten thousand dollars, 7 p.c.

If it exceeds ten thousand dollars, $7\frac{1}{2}$ p.c.

(d.) If the succession devolves to any other collateral :—

If it does not exceed ten thousand dollars, 8 p.c.

If it exceeds ten thousand dollars, 9 p.c.

3. *If Succession Devolves to a Stranger.*—If the succession devolves to a stranger, 10 p.c.

Provided that in the case of a transmission in the collateral line or to a stranger where the amount passing to any one person exceeds fifty thousand dollars, a further duty in addition to the rates hereinbefore mentioned in paragraphs 2 and 3 shall be paid on the amount so passing, as follows :

(a.) Where the whole amount so passing to one person exceeds fifty thousand dollars, but does not exceed one hundred thousand dollars, 1 p.c.

(b.) Exceeds one hundred thousand dollars, but does not exceed one hundred and fifty thousand dollars, $1\frac{1}{2}$ p.c.

(c.) Exceeds one hundred and fifty thousand dollars, but does not exceed two hundred thousand dollars, 2 p.c.

(d.) Exceeds two hundred thousand dollars, but does not exceed two hundred and fifty thousand dollars, $2\frac{1}{2}$ p.c.

(e.) Exceeds two hundred and fifty thousand dollars, but does not exceed three hundred thousand dollars, 3 p.c.

(f.) Exceeds three hundred thousand dollars, but does not exceed three hundred and fifty thousand dollars, $3\frac{1}{2}$ p.c.

(g.) Exceeds three hundred and fifty thousand dollars, but does not exceed four hundred thousand dollars, 4 p.c.

(h.) Exceeds four hundred thousand dollars, but does not exceed four hundred and fifty thousand dollars, $4\frac{1}{2}$ p.c.

(i.) Exceeds four hundred and fifty thousand dollars, 5 p.c.

4. Provided further, that whenever any estate or part of an estate, or any bequest or legacy, subject to this Act, devolves to any person domiciled outside of the British Empire or to any association having its chief place of business outside of the British Empire, an additional duty of five per cent. shall be paid upon the value of such estate, or part thereof, bequest on legacy, over and above the duty mentioned in paragraphs 1, 2 and 3 of this article. Amendment 7 Edw. VII., c. 14, s. 1.

1191c. WORD PROPERTY DEFINED.—The word “property” within the meaning of this section, shall include all property, whether moveable or immovable, actually situate or owing within the province, whether the deceased at the time of his death had his domicile within or without the province, or whether the debt is payable within or without the province, or whether the transmission takes place within or without the province, and all moveables, wherever situate, of persons having their domicile, or residing in the Province of Quebec at the time of their death.

1191d. LIFE INSURANCE POLICIES UNDER R. S. 5581, ARE DUTIABLE.—Life Insurance policies effected or appropriated under the provisions of Article 5581 of the Revised Statutes are dutiable in the same manner as any other moveable property.

1191e. No duty shall be leviable on property devised or bequeathed for religious, charitable or educational purposes, to be carried on by a corporation or person domiciled within the Province of Quebec, but only to an amount not exceeding one thousand dollars in each case.

1191f. BY WHOM TO BE PAID IN CERTAIN CASES.—In the case of property transmitted in usufruct or with substitution, the tax shall be paid by the usufructuary or the institute, and shall not be exigible from any further beneficiary under the same deed.

1191g. COPY OF WILL TO BE SENT TO COLLECTOR WITHIN CERTAIN TIME OF DECEASE.—DECLARATION AS TO VALUE OF ESTATE TO BE PRODUCED WITHIN CERTAIN TIME AND WHAT TO CONTAIN.—Every heir, universal legatee, legatee by general or particular title, executor, trustee and administrator, or notary before whom a will has been executed, shall, within thirty days after the death of the testator or *de cujus*, forward to the collector of Provincial Revenue for the district wherein the testator died or the succession devolved a copy of the will, if there is one, and said person, excepting the notary, shall also transmit within three months to such collector of provincial revenue, a declaration under oath, setting forth the name, surname, residence and calling of the declarant, the name, surname, and residence of the testator or *de cujus*, the description and real value of all the property transmitted, the amounts in detail of the debts and charges of the succession, with the names, surnames, residence and calling of all creditors, and, further, the nature and value of the share of the declarant in the succession, after deducting the debts and

charges payable by him, of which a detailed statement, with the names, surnames, residence and calling of the creditors, must also be given.

The declaration duly made by one of the above-named persons relieves the others as regards such declaration.

2. *Where Will Deposited of Persons Dying Outside.*—In cases of property in this province, of persons dying outside the province, the will shall be deposited and the declarations filed with the collector of Provincial Revenue for any one of the districts in which such property is situate.

3. If, however, within the said three months an interim declaration, under oath, is made by one of the beneficiaries, that it is impossible, within the said delay, to furnish the declaration mentioned in the preceding paragraph, the said collector may extend such delay for sixty days, and a further delay, not exceeding six months, may be granted by the Provincial Treasurer.

4. *Statement of Amount Due to be Prepared.*—On receipt of such first mentioned declaration, the said collector shall cause to be prepared a statement of the amount of the duties to be paid by the declarant.

5. Such collector of Provincial Revenue shall inform the declarant of the amount due as aforesaid, by registered letter mailed to his address, and notify him to pay the same within thirty days after the notice is sent; and if the amount is not then paid to him on the day fixed, the collector of Provincial Revenue may sue for the recovery thereof before any court of competent jurisdiction in his own district.

6. *Transfers Invalid if Duties not Paid.*—No transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir or legatee shall consent to any transfers or payments of legacies, unless the said duties have been paid.

7. *Penalty if Declaration is not Made, etc.*—If any declaration, so required, is not made within the prescribed delay, or within any extended delay that may have been granted, or if any false or incorrect statement is made in any such declaration, either as to value or otherwise, double duties shall become due and be exacted in favor of His Majesty, and the person in default shall, in addition to any other recourse against him, be liable to a penalty of one hundred dollars and, in default of payment, imprisonment for one month.

8. The Provincial Treasurer may, in his discretion, and upon such notice to the parties interested as the court or judge may prescribe, present a petition to the Superior Court of the domicile of any person having in his possession or under his control, any books or papers of a succession to which this section applies, or to a judge thereof, praying for an order commanding such person to produce such books or papers before the court or judge, within such delay as the court or judge may fix, for the inspection of the Provincial Treasurer or of any person appointed by the latter for that purpose. Such petition shall be accompanied by an affidavit of the comptroller of Provincial Revenue, or of the proper collector of Provincial Revenue, setting fourth that the deponent has reason to believe and does believe that the declaration made with respect to such succession under this article, has omitted or undervalued assets of the succession liable to duty, and that access to such books or papers has been refused him; and the court or judge, after hearing summarily the parties present, shall, in its or his discretion, give or refuse the order.

Upon such order having been duly served upon said person, the latter shall be bound and, subject to all legal penalties in case of default so to do, to produce such books or papers as aforesaid; and upon the same having been so produced, the Provincial Treasurer or his representative, subject to the orders which the court or judge may give in that behalf, may take communication of such books or papers, and make copies of or extracts therefrom. The costs of such application and of the proceedings thereunder shall be in the discretion of the court or judge. (Added by 7 Edw. VII., c. 14, s. 2.

1191h. CORPORATION TO NOTIFY PROVINCIAL TREASURER OF DEATH OF SHAREHOLDER, ETC., GIVING CERTAIN DETAILS.—Every corporation, company or firm, having its chief office or place of business in the Province of Quebec, in which any person dying outside the province was possessed of any interest, shares, stock or bonds, must, within thirty days of the date whereon it obtains knowledge of the death, unless the Provincial Treasurer should extend the delay for reasonable cause shown, send to the Provincial Treasurer a notice of the death, giving the date thereof and the full name, quality and domicile of the deceased and the amount of such interest, shares, stock or bonds, and in default of so doing shall be liable to a penalty not exceeding fifty dollars.

119ii. **SUITS AND FINES, ETC.**—All fines imposed by this section shall be paid to the collector of Provincial Revenue for the district in which such fines were incurred and collected, and shall be recovered before the Superior or the Circuit Court, according to the amount thereof, by suit, on behalf of His Majesty, taken by the collector of Provincial Revenue in his own name.

119ij. **PRIVILEGE OF SUMS DUE CROWN.**—Any sum that may become due to the Crown, in virtue of this section, shall constitute a privileged debt, ranking immediately after law costs.

119ik. **PERCENTAGE TO BE RETAINED BY COLLECTOR.**—The collector of the Provincial Revenue, who collects any sum in virtue of this section, shall be entitled to retain such percentage as the Lieutenant Governor in Council may determine.

119il. The Lieutenant-Governor in Council may make, amend, replace and repeal all regulations and forms that he may consider necessary for the purpose of carrying out the provisions of this section, which regulations and forms shall come into force as soon as they are published in the *Quebec Official Gazette*.

2. *Effect of Repeal by this Act.*—The repeal, by section 1 of this Act, of Section XVIIIa of the fifth chapter of the fourth title of the Revised Statutes, as enacted by the Act 55-56 Victoria, chapter 17, section 1, and of the acts amending the same, shall not have the effect of remitting the duties which have become due nor the penalties incurred in virtue thereof, but such duties and penalties shall be collected in virtue of the provisions of the repealed law as if this Act had not been passed.

3. *Coming into Force.*—This Act shall come into force on the day of its sanction.

MANITOBA

MANITOBA SUCCESSION DUTIES ACT

R. S. M., 1902, cap. 161, and amendments thereto.

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as "The Succession Duties Act." 56 V., c. 31, s. 1, part.

INTERPRETATION.

2. In this Act, unless the context otherwise requires:—

(a.) The expression "property" includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives; 56 V., c. 31, s. 2.

(b.) The expression "aggregate value" means the fair market value of the property before any debts, obligations or liabilities are deducted therefrom.

(c.) The expression "dutiable value" means the fair market value of the property after payment of all debts, obligations and liabilities. 4-5 Ed. VII., c. 45, s. 1.

APPLICATION OF THE ACT.

3. This Act shall be deemed to have gone into effect as respects the estate of persons dying on or after the first day of July, in the year one thousand eight hundred and ninety-three. 56 V., c. 31, s. 1, part.

4. This Act shall not apply:—

(a.) To any estate, the dutiable value of which does not exceed four thousand dollars, nor

(b.) To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law, or son-in-law, of the deceased, or one or more of such persons, where the aggregate value of the property so passing does not exceed twenty-five thousand dollars, and when the person leaving such estate was and had been for at least six months prior to his death domiciled in the Province of Manitoba. 4-5 Ed. VII., c. 45, s. 3.

PROPERTY LIABLE AND AMOUNT OF DUTY.

5. (1) Save as aforesaid the following property shall be subject to a succession duty as hereinafter provided, to be

paid for the use of the province over and above the fees payable under "The Surrogate Courts Act:"

(a.) All property within this province, and any interest therein or income therefrom, whether the deceased person owning the same or entitled thereto was domiciled in Manitoba at the time of his death or was domiciled elsewhere, and all movable property locally situate out of this province, and any interest therein or income therefrom, where the owner was domiciled in this province at the time of his death;

(b.) All property situate as aforesaid, or any interest therein or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect, in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property, or the income thereof;

(c.) Any property situate as aforesaid taken as a *donatio mortis causa* made by any person dying, or taken under a disposition made by any person so dying, purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made twelve months before the death of the deceased, including property taken under any gift whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise;

(d.) Any property situate as aforesaid to which a person, at the time of his death, was entitled and which in his lifetime he has caused to be transferred to or vested in himself and any other person or persons jointly, whether by disposition or otherwise, so that the beneficial interest therein, or some part thereof, passes or accrues by survivorship on his death to such other person or persons, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone or in concert or by arrangement with any other person.

(2) (a.) The duty payable upon all property liable to duty under this Act shall be computed upon the dutiable value of such property, according to the following scale, that is to say:

Up to \$25,000, 1 p.c. on the whole estate;

Over \$25,000 and up to \$50,000, 2 p.c. on the whole estate;

Over \$50,000 and up to \$100,000, 3 p.c. on the whole estate;

Over \$100,000 and up to \$150,000, 4 p.c. on the whole estate;

Over \$150,000 and up to \$200,000, 5 p.c. on the whole estate;

Over \$200,000 and up to \$300,000, 6 p.c. on the whole estate;

Over \$300,000 and up to \$400,000, 7 p.c. on the whole estate;

Over \$400,000 and up to \$500,000, 8 p.c. on the whole estate;

Over \$500,000 and upwards, 10 p.c. on the whole estate;

(b.) Provided that, where the whole value of any property devised, bequeathed or passing to any one person under a will or intestacy does not exceed two thousand dollars, the same shall be exempt from payment of the duty imposed by this section;

(c.) Provided that all duties under this Act shall be levied and collected *pro rata* upon the whole of the estate of the deceased person liable to the duty. 4-5 Ed. VII., c. 45, s. 4.

6. An executor or administrator applying for letters probate or letters of administration to the estate of a deceased person shall, before the issue of letters probate or administration to him, make and file with the surrogate clerk a full, true and correct statement under oath showing (a) a full itemized inventory of all the property of the deceased person and the market value at the date of application for probate, of the will of such deceased person or letters of administration of the estate; (b), the several persons to whom the same will pass under the will or intestacy so far as known and the degree of relationship, if any, in which they stand to the deceased, and the executor or administrator, except the official administrator, shall before the issue of letters probate or letters of administration deliver to the surrogate clerk a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties, to be approved by the registrar, conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable, or furnish such other security in lieu of such bond as may be satisfactory to the Judge of the Surrogate Court.

(a.) This section does not apply to estates in respect of which no succession duty is payable. 56 V. c. 31, s. 5; 63 and 64 V., c. 51, s. 3.

7. In case the Treasurer of the province is not satisfied with the value so sworn to, the surrogate clerk shall, at the instance of the Provincial Treasurer, his solicitor or agent, direct in writing that the sheriff of the judicial district in which any property subject to the payment of said duty is situate shall make a valuation and appraise the said property. 56 V. c., 31, s. 6.

8. In such case the sheriff shall forthwith give due and sufficient written notice to the executors and administrators and to such other persons as the surrogate clerk may by order direct, of the time and place at which he will appraise such property; and he shall appraise the same accordingly at its fair market value and make a report thereof in writing to the surrogate clerk, together with such other facts in relation thereto as the surrogate clerk may by order require, and such report shall be filed in the office of the surrogate clerk. The sheriff shall be entitled to receive the sum of five dollars per diem for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Treasurer of the province. 56 V., c. 31, s. 7.

9. The surrogate clerk shall, upon receiving the report of the sheriff, forthwith assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof, by registered letter, to such parties as by the rules of the Court of King's Bench would be entitled to notice in respect of like interests in an analogous proceeding; and the surrogate clerk may, and in every proper case, shall, where infants who have no guardians are interested, notify the official guardian *ad litem* of infants' estates to represent the interest of said infants, and the value of every future or contingent or limited estate, income, or interest shall, for the purpose of this Act be determined by the rule, method and standards of mortality and of value, which are employed in ascertaining the value of policies of life insurance and annuities, for the determination of the liabilities of life insurance companies, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be five per centum per annum. 56 V., c. 31, s. 8.

APPEALS.

10. Any person dissatisfied with the appraisement or assessment may appeal therefrom to the Judge of the Surrogate Court in which application has been made for letters probate or letters of administration within thirty days after the making and filing of such assessment, and upon such

appeal the Judge of said Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and the decision of the Judge shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of ten thousand dollars, when further appeal shall lie from the decision of the Judge of the Surrogate Court to a Judge of the Court of King's Bench, whose decision shall be final.

(a.) The law and practice governing appeals from the decision of a County Court to a Judge of the Court of King's Bench from time to time in force shall govern such appeal from the Judge of the Surrogate Court to a Judge of the Court of King's Bench. 56 V., c. 31, s. 9.

REQUESTS TO EXECUTORS.

11. Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the Judge of the Surrogate Court having jurisdiction in the case shall fix such compensation. 56 V. c. 31, s. 10.

FUTURE ESTATES.

12. In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates or a period of years, the duty on such future estate or interest shall not be payable nor interest beg'n to run thereon, until the person or persons liable for the same shall come into actual possession of such estate or interest by the determination of the estates for life or years and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid. 56 V., c. 31, s. 11.

TIME OF PAYMENT.

13. The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, or within eighteen months thereafter, and if the same are paid within eighteen months no interests shall be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties together with the interest thereon shall be and remain a lien

upon the property in respect to which they are payable until the same is paid. 56 V., c. 31, s. 12.

14. The Judge of the Surrogate Court may make an order upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control. 56 V., c. 31, s. 13.

POWERS OF ADMINISTRATORS, EXECUTORS AND TRUSTEES.

15. Any administrator, executor or trustee having in charge or trust, any estate, legacy, or property subject to the said duty shall deduct the duty therefrom, or collect the duty thereon upon the appraised value thereof, from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 56 V., c. 31, s. 14.

16. Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be or are enabled by law so to do for the payment of debts of the testator or interstate. 56 V., c. 31, s. 15.

17. Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Treasurer of the province. 56 V., c. 31, s. 16.

18. Where any debts shall be proven against the estate of a deceased person, after the payment of legacies or distribution of property from which the said duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Treasurer of the province, or by the Treasurer if it has been so paid. 56 V., c. 31, s. 17.

ENFORCEMENT OF PAYMENT.

19. If it appears to the Judge of the Surrogate Court that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty to appear before the Court on a day certain to be therein named and show cause why said duty should not be paid. The service of such order

and the time, manner and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon shall be according to the practice in or upon the enforcement of a judgment of the Court of King's Bench.

(a.) An appeal shall lie from the decision of the Judge under this section in the manner provided by sub-section (a) of the tenth section of this Act. 56 V., c. 31, s. 18.

20. The costs of all such proceedings shall be in the discrimination of the Court or Judge, and shall be upon the County Court scale, unless and until another tariff shall be provided, save as to the costs of an appeal, and then upon the scale of the Court appealed to. 56 V., c. 31, s. 19.

OFFICIAL FEES.

21. The judges and clerks of the several Surrogate Courts shall be entitled to take for the performance of duties and services under this Act, similar fees to those payable to them respectively under and by virtue of "The Surrogate Courts Act" and rules for similar proceedings. 56 V., c. 31, s. 20.

OFFICIAL SECURITIES.

22. Every surrogate clerk before entering on the duties of his office shall deliver to the Treasurer of the province a bond or other security or securities in such sum and with such sufficient surety or sureties, as may be approved of by the Lieutenant Governor in Council, for the due and proper performance of the duties imposed upon such surrogate clerk by this Act, and the provisions of "The Manitoba Public Officers Act" and "The Official Securities Act" relating to the giving of security by such officers, shall, where not inconsistent with this Act, apply to such bonds or other securities. 56 V., c. 31, s. 21, part.

REGULATIONS.

23. The Lieutenant Governor in Council may make regulations for carrying into effect the provisions of this Act, which shall forthwith be published in *The Manitoba Gazette*, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is not in session such regulations shall be laid before the House within the first fourteen days of the session next after such regulations are made. 56 V., c. 31, s. 22.

BRITISH COLUMBIA

BRITISH COLUMBIA SUCCESSION DUTY ACT

7 Edw. VII chap. 39

AN ACT TO CONSOLIDATE AND AMEND THE "SUCCESSION
DUTY ACT" AND AMENDING ACTS.

[25th April, 1907.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as the "Succession Duty Act." 1894, c. 47, s. 1; R. S. 1897, c. 175, s. 1.

2. (1) Interpretation. "Property."—The word "property" in this Act includes real and personal property of every description and every estate or interest therein capable of being devised or bequeathed by will, or of passing on the death of the owner to his heirs or personal representatives:

"Child."—The word "child" within the meaning of this Act shall be deemed to include any lawful child of the deceased, or any lineal descendant of such child, or any person or persons adopted before the age of twelve years by the deceased as his child or children, or any infant to whom the deceased for not less than ten years immediately prior to his death stood in the acknowledged relationship of a parent, or any lineal descendant of such adopted child or infant as aforesaid born in lawful wedlock:

"Aggregate value."—The phrase "aggregate value" means the value of the property before the debts, encumbrances, or other allowances authorised by sub-section (2) of this section are deducted therefrom, and shall include property situate outside the Province as well as property situate within the Province. 1900, c. 35, s. 14:

"Dutiable value."—"Dutiable value" means the value of the property after the debts, encumbrances or other allowances or exemptions authorised by this Act are deducted therefrom:

(2) Mode of determining dutiable value.—In determining the dutiable value of any property of a deceased person for the purposes of the payment of succession duty hereunder, the value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses and for his debts and encumbrances; and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property; but an allowance shall not be made—

(a) For debts incurred by the deceased, or encumbrances created by a disposition made by the deceased, unless such debts or encumbrances were incurred or created bona fide for full considera-

tion in money or money's worth wholly for the deceased's own use and benefit, and take effect out of his interest; nor

(b) For any debt in respect whereof there is a right to re-imbursement from any other estate or person, unless such re-imbursement cannot be obtained; nor

(c) More than once for the same debt or encumbrance charged upon different portions of the estate; nor

(d) Shall any allowance or reduction be made for the expense of administration of the estate (except probate dues) or the execution of any trust created by the will of a testator.

3. To what Act does not apply.—This Act shall not apply so far as liability to pay succession duty is concerned.

(1) **In value.**—To any estate the value of which does not exceed five thousand dollars; nor

(2) **In case of certain relations of the deceased.**—To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars in value. 1894, c. 47, s. 3; R.S. 1897, c. 175, s. 3, (as amended by 8 Edw. VII., c. 46, s. 2.)

4. (1) Property liable to succession duty.—Save as aforesaid, the following property shall be subject to succession duty as hereinafter provided, to be paid for the use of the Province over and above the probate dues prescribed in that behalf from time to time by law:—

(a) **Property situate in Province.**—All property situate within this Province, and any interest therein or income therefrom, whether the deceased person owning or entitled thereto was domiciled in British Columbia at the time of his death, or was domiciled elsewhere, passing either by will or intestacy. The words "all property situate within this Province" shall include all policies of insurance, wherever entered into, or wherever payable, and all mortgages upon property of any kind situate or partly situate in this Province, and all choses in action of whatever kind soever, wherever entered into or wherever payable, all shares, stocks, bonds, debentures and other securities for money, no matter where the corporation or other body issuing the same may be located, belonging to the estate of any person dying in this Province, who was at the time of his death domiciled in this province.

(b) **Property voluntarily transferred in contemplation of death.**—All property situate as aforesaid, or any interest therein, or income therefrom, which shall be voluntarily transferred by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property or the income thereof:

(c) **Donationes mortis causa or voluntary dispositions made within 12 months before death, etc.**—Any property taken as donatio mortis causa, made by any person dying on or after the first day of May, A.D. 1899, or taken under a disposition made by any person so dying, purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been bona fide made twelve months before the death of the deceased, including property taken under any gift, whenever made, of which property bona fide

possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise:

(d) **Property transferred by owner to himself jointly with some other person.**—Any property which a person dying on or after the first day of May, A.D. 1899, having been absolutely entitled thereto, has caused or may cause to be transferred to or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property, either by himself alone, or in concert, or by arrangement with any other person:

(e) **Property passing under settlement.**—Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by any person dying on or after the first day of May, A.D. 1899, by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof for life, or any other period, determinable by reference to death, is reserved, either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise re-settle the same, or any part thereof:

(f) **Annuities, etc.**—Any annuity or other interest purchased or provided by any person dying on or after the first day of May, A.D. 1899, either by himself alone, or in concert, or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased:

(g) **Property of which deceased was competent to dispose liable to duty.**—Imp. Act, 57-58 Vict., c. 30, s. 2 (a) and s 22 (2).—Any property of which a person dying after the coming into force of this section was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein, or such general or limited power as would, if he were *sui juris*, enable him to dispose of the property as he thinks fit, or to dispose of the same for the benefit of his children, or some of them, whether the power is exercisable by instrument *inter vivos*, or by will, or both, including the power exercisable by a tenant in tail, whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose. 1900, c. 35, s. 12.

(2) **Particular description of property liable not to affect general words.**—The descriptions of properties in clauses (c), (d),

(e), (f) and (g) of sub-section (1) shall not be construed to restrict the generality of the descriptions contained in clauses (a) and (b) of said sub-section.

(3) **Amount of duty in certain cases.**—Where the aggregate value of the property of the deceased exceeds twenty-five thousand dollars, and passes under a will, intestacy or otherwise, either in whole or in part, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes (as the case may be), shall be subject to duty as follows:—

Upon the dutiable value up to and including one hundred thousand dollars, at the rate of one dollar and fifty cents for every one hundred dollars of value of the whole property:

Where said dutiable value exceeds one hundred thousand dollars, but does exceed two hundred thousand dollars, at the rate of two dollars and fifty cents for every one hundred dollars of dutiable value of the whole property:

Where said dutiable value exceeds two hundred thousand dollars, at the rate of five dollars for every one hundred dollars of dutiable value of the whole property: 1900, c. 35, s. 13.

(4) Where the aggregate value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of the grandfather, grandmother, or any other lineal ancestor of the deceased, except the father or mother, or to any brother or sister of the deceased, or to any descendants of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last-mentioned brother or sister, the same, or so much thereof as so passes (as the case may be), shall be subject to a duty of five dollars for every one hundred dollars of the dutiable value without any exemption.

(5) Where the aggregate value of the property of the deceased exceeds five thousand dollars and passes under a will, intestacy, or otherwise, either in whole or in part, to or for the use of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the use of any stranger in blood to the deceased, save as hereinbefore provided for the same, or so much thereof as so passes (as the case may be), shall be subject to a duty of ten dollars for every one hundred dollars of the dutiable value without exemption.

(6) **Proviso.**—Provided that the duties hereby imposed shall be deducted from the share of each person entitled to share in the estate, according to the rate applicable as above to such person's share:

(7) (a) **Proviso as to property brought into Province for administration.**—Provided that any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in this Province or elsewhere, which is brought into this Province by the executors or administrators of the estate to be administered or distributed in this Province, shall be liable to the duty hereinbefore imposed; but if any estate, succession or legacy duty or tax has been paid upon such property elsewhere than in this Province, and such duty or tax is equal to or greater than the duty payable on property in this Province, no duty shall be payable thereon, and if the duty or tax so paid elsewhere is less than the duty payable on property in this Province, then the property upon which such duty or tax has been paid elsewhere shall be subject to

the payment of such portion only of the succession duty provided for in the preceding sub-sections of this section as will equal the difference between the duties payable under this Act with respect to property in this Province and the duty or tax so paid elsewhere:

(b) Provided further, that where any movable or personal property locally situate outside the Province, or any interest therein as aforesaid, shall have paid any estate, succession or legacy duty or tax elsewhere than in this Province, a like allowance for the amount so paid as in the next preceeding clause mentioned shall be made by this Province, and the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the preceding sub-section of this section as will equal the difference between the duties payable under this Act with respect to property in this Province and the duty or tax so paid elsewhere:

(c) Provided further, that allowance for any estate, succession or legacy duty or tax payable elsewhere than in this Province shall be made under this section only as to any country, state or British province or possession where an allowance is made for the succession duty paid under this Act on property situate in this Province passing on the death of any person domiciled in any such country, state or British province or possession, and the Lieutenant-Governor in Council, by Order-in-Council, shall have extended the provisions of this section as to such allowance by this Province so as to apply to such country, state or British province or possession:

(d) The Lieutenant-Governor may, by Order-in-Council, revoke any such order, where it appears that the law of such country, state, British province or possession has been so altered that it would not authorise the making of an order hereunder.

(8) **Penalty against executor or administrator who to escape payment of duty distributes estate without bringing same into Province.**—In case an executor or administrator shall, in order to escape payment of succession duty imposed by this Act, distribute any part of any such estate without bringing the same into this Province, such executor or administrator shall be liable, personally, to pay to His Majesty the amount of the duty which would have been payable had the assets so distributed been brought within this Province.

(9) **Bona fide transfers of property not subject to Act.**—Nothing herein contained shall render liable for duty any property bona fide transferred for a consideration that is of a value substantially equivalent to the property transferred. 1899, c. 68, s. 2. (as amended by 8, Edw. VII, c. 46, ss. 3, and 4.)

5. (1) **Aggregate value of estate—property out of Province to be included.**—On all applications for letters probate or letters of administration, or for re-sealing probate or letters under the provisions of the "Probates Recognition Act," made to any Court in this Province, the applicant, or one of the applicants, shall make and file with the Registrar of the Court, at the time of filing the papers required by the practice of the Court on such application, two duplicate original affidavits of value and relationship, with inventories annexed, in the form numbered 1 in Schedule A hereto:

(2) Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased:

(3) The Registrar shall forthwith on receipt thereof forward one of such duplicate original affidavits to the Minister of Finance, at Victoria, together with a notice in the form numbered 2 in Schedule A hereto. The minister of Finance, on receipt of the said af-

fidavits, shall authorise the Auditor General to determine the amount of the Succession Duty (if any), and shall forward a statement of the same to the Registrar, together with his consent in form numbered 8 of the schedule hereto, to issue letters of administration. Such consent shall apply only to estates the value of which is in excess of five thousand dollars.

(4) The Registrar shall, upon receipt of the said affidavit of value and relationship with inventories annexed, determine whether, in his opinion, the property of the deceased is liable or may become liable to succession duty, and in case he considers the same to be liable, or likely to become liable, require immediate payment thereof or security to be given, which security may be given by bond in the form numbered 3 in Schedule A hereto:

(5) In cases where a bond is required to be given under the next preceding sub-section, such bond shall be in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable, or which may become liable, to succession duty, and shall be executed by the applicant, or all the applicants in case there is more than one, each of whom shall be bound in the whole amount of such bond, and two or more sureties to be approved by the Registrar of the Court to which application is made, who shall justify each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond, and such bond shall be conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of the said applicant or applicants may be found liable. In lieu of said bond, the bond or policy of guarantee of any incorporated company empowered to grant guarantees, bonds, covenants or policies for due and faithful accounting may be accepted as such security, and the above provisions shall, *mutatis mutandis*, apply to such security. The interim receipt of such company may be accepted in lieu of the formal security, but the formal security shall be completed within two months from the date of such interim receipt:

(6) This bond is to be approved by the Minister of Finance and filed in the office of the said Registrar to which application is made:

(7). In cases where security has been given for the payment of succession duty as aforesaid, notice of any appointment for the passing of the accounts of the executor or administrator shall be served upon the Registrar by the executor or administrator or his solicitor, together with a copy of the accounts:

(8) The forms set out in said Schedule A are to be followed as nearly as the circumstances of each case allow, (as amended by 8, Edw. VII, c. 46, ss. 5, and 6.)

6. Foreign executors not to transfer stocks until duty paid.—No foreign executor or administrator shall assign or transfer any stocks or shares in this Province standing in the name of a deceased person, or in trust for him, which are liable to pay succession duty until such duty is paid to the Registrar or security given as required by section 5, and any corporation allowing a transfer of any stocks or shares contrary to this section shall be liable to pay the duty payable in respect thereof. 1900, c. 35, s. 15.

7. If Minister of Finance not satisfied with value sworn to Sheriff to appraise.—In case the Minister of Finance is not satisfied with the value so sworn to, he shall request the Registrar to direct in writing that the Sheriff for the County or District in which any property subject to the payment of the said duty is situate shall make a valuation

and appraise the said property. One week's notice of such valuation and appraisement to all parties interested, or their solicitors or agents, before proceeding therewith, shall *prima facie*, be considered sufficient notice. 1894, c. 47, s. 6; R.S. 1897, c. 175, s. 6, (as amended by 8 Edw. VII, c. 46, s. 7.)

8. Duties of Sheriff in such case.—In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators, and to such other persons as the Registrar may by order direct, of the time and place at which he will appraise such property; and he shall appraise the same accordingly at its fair market value, and make a report thereof in writing, in duplicate, to the Registrar, together with such other facts in relation thereto as the Minister of Finance may by order require, and one copy of such report shall be filed in the office of the Registrar, and one copy shall be forwarded to the Minister of Finance. The Sheriff shall be entitled to receive the sum of five dollars per diem for services performed under this Act, and his actual and necessary travelling expenses, and the same shall be paid to him by the Minister of Finance. 1894, c. 47, s. 7; R.S. 1897, c. 175, s. 7.

9. Registrar, on receipt of report of Sheriff, to fix cash value of estate, etc., and give notice.—The Registrar shall, upon receiving the report of the Sheriff, forthwith forward the same to the Minister of Finance and shall, upon receiving the consent of the Minister of Finance, and the statement of the Auditor General of the amount of the succession duty payable immediately give notice thereof, by registered letter, to such parties as by the rules of the Supreme Court would be entitled to notice in respect of like interests in an analogous proceeding; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by Schedule C hereto, save that the rate of interest to be assessed in computing the present value of all future interests and contingencies shall be six per centum per annum, and the Auditor-General shall, on the application of any Registrar, determine the value of any future, or contingent, or limited estate, income or interest upon the facts contained in such report, and shall certify the same to the Registrar, and such certificate shall be conclusive as to the matters dealt with therein, (as amended by 8 Edw. VII, c. 46, s. 8.)

10. Appeal of person from such assessment.—Any person dissatisfied with the appraisement or assessment may appeal therefrom to a Judge of the Supreme Court of British Columbia within thirty days after the making and filing of such assessment, and upon such appeal the Judge of said Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate, or any part thereof, for such duty, and the decision of the Judge shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of ten thousand dollars, when a further appeal shall lie from the decision of the Judge to the Full Court. 1894, c. 47, s. 9; R. S. 1897, c. 175, s. 9.

11. Request to an executor in lieu of commissint.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Act, is made to an executor or trustee in lieu of commissions or allowance, and said bequest or device exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and such compensation shall be fixed by a Judge of the Supreme Court. 1894, c. 47, s. 10; R. S. 1897, c. 175, s. 10.

12. (1) Future and contingent estates.—Where the dutiable property (real or personal) includes any future or contingent estate, income or interest, the duty on such estate, income or interest may be paid within the time limited by subsection (1) of section 15; and, where so paid, the duty shall be on the value of such estate, income or interest computed under section 9, as at the death of the deceased. By consent of the Minister of Finance, in writing, duty may be paid after the time so limited and before such estate, income, or interest comes into possession; but in the event of such consent, the duty shall then be on a value not less, in any event, than the value of such estate, income or interest computed under section 9 as at the date when the duty is paid; and no deduction shall be made for duty paid or payable on any prior estate, income or interest. The duty on any future or contingent estate, income or interest, if not sooner paid (as in this sub-section provided), shall be payable forthwith when such estate, income or interest comes into possession, in which case the duty shall be on the value computed under section 9 as at the date of such coming into possession; and no deduction shall be made for duty paid or payable on any prior estate, income or interest.

(2) Where the duty on any future or contingent estate, income or interest has been paid by the executor, administrator or trustee before such estate, income or interest comes into possession, the duty so paid shall be charged on such future or contingent estate, income or interest, and shall be repaid with interest at the rate mentioned in section 9, to the executor, administrator or trustee, as the case may be, by the person who is to become entitled to such future or contingent estate, income or interest; and if not sooner repaid shall then be repaid at the time when such estate, income or interest comes into possession.

13. Where no person entitled to present income of future or contingent estates.—Where in respect of any future or contingent estate or interest, there is no person beneficially entitled to the present income or enjoyment, or where there is some part thereof to which there is no person so entitled, the duty on such future or contingent estate or interest, or on part thereof, as the case may be, shall be payable as in sections 12, 13, 14 and 15, provided.

14. (1) Commutation of payment of duty on future or contingent estates.—Notwithstanding the duty may not be payable on any future or contingent estate, income or interest, until the time when the right of possession or actual enjoyment accrues, any executor, administrator, guardian, or trustee, or person owning a prior interest, when such executor, administrator, guardian, or trustee, or person has the custody or control of the property, may agree upon or commute for a present payment out of the property in discharge of the said duty; and the Minister of Finance may upon the application of any such person, commute the succession duty, which would or might, but for the commutation, become payable in respect of such interest, for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest; and on the receipt of such sum the Minister of Finance shall give a certificate of discharge from such duty.

(2) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts. 1896, c. 44, s. 4; R. S. 1897, c. 175, s. 13:

(3) Provided, however, that a certificate purporting to be a dis-

charge of the whole succession duty payable in respect of any property included in the certificate shall exonerate from the duty a bona fide purchaser for valuable consideration without notice, notwithstanding any such fraud or failure.

15. Interest on duty not paid within two years.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased, and if the same are paid within two years no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per centum per annum shall be charged and collected from the expiry of such period of two years, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid. 1894, c. 47, s. 12; R. S. 1897, c. 175, s. 14.

(2) Minister of Finance may apply to Judge for order enforcing payment of succession duty.—A Judge of the Supreme Court may at any time after the death of the deceased, upon the application of the Minister of Finance, issue a summons directing the executor, administrator, heir or devisee of the property liable to duty, to appear before a Judge of the said Court on a day certain to be therein named, and shew cause why the said duty should not be paid forthwith, or on a day to be fixed by said Judge. Upon the return of said summons, a Judge shall have power to order payment of said duty forthwith, or to fix a day upon which said duty shall be paid. The procedure applicable to such an application, including the enforcement of any order made, shall be the procedure of the Court governing applications to, and orders made by, Judges in Chambers. 1901, c. 53, s. 2.

16. Judge may make order as to time for payment of duty and interest.—A Judge of the Supreme Court may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof, and also the date when interest shall be chargeable, where it appears to such Judge that payment within the time prescribed by this Act is impossible, owing to some cause over which the person liable has no control. 1894, c. 47, s. 13; R. S. 1897, c. 175, s. 15.

17. Administrators, etc., to deduct or collect duty.—Any person, administrator, executor, or trustee having in charge or trust any estate, legacy, or property subject to the said duty shall deduct the duty therefrom or collect the duty thereon upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 1894, c. 47, s. 14; R. S. 1897, c. 175, s. 16.

18. Executors' power of sale to realise duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty, in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate 1894, c. 47, s. 15; R. S. 1897, c. 175, s. 17.

19. Money coming into executors' hands for duty to be paid into Treasury.—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Registrar of the Court in which the affidavit has been filed and shall be by him accounted for to the Treasury of the Province, or as the Minister of Finance may otherwise direct.

(2) **Return showing amounts unpaid.**—The Registrars of the Courts in each judicial district shall, on the thirtieth day of June in each year, furnish to the Minister of Finance a return of the amounts unpaid, giving the name of each estate, the date and the amount of the bond, names of sureties and the amount of succession duty due by each estate, in the form in Schedule B hereof.

20. Duty paid on property refunded by next of kin, etc., to pay debts proved after distribution to be repaid.—Where any debts shall be proven against the estate of a deceased person after the payment of legacies or distribution of property from which the said duty has been deducted or upon which it has been paid, and a refund is made by the legatee, devise, heir, or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Minister of Finance, or by the Minister if it has so been paid. 1894, c. 47, s. 17; R. S. 1897, c. 175, s. 19.

21. Judge may order persons to show cause why duty has not been paid.—**Practice.**—If it appears to a Judge that any duty accruing under this Act has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty to appear before the Court on a day certain, to be therein named, and show cause why said duty should not be paid. The service of such order, and the time, manner, and proof thereof, and fees therefor, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon, shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court. 1894, c. 47, s. 18; R. S. 1897, c. 175, s. 20.

22. Costs of such proceeding.—The costs of all such proceedings shall be in the discretion of the Court or Judge, and shall be upon the Supreme Court scale, unless and until another tariff shall be provided. 1894, c. 47, s. 19; R. S. 1897, c. 175, s. 21.

ADDITIONAL REMEDIES.

23. Recovery of succession duties by action.—Any sum payable under this Act shall be recoverable with full costs of suit as a debt due to His Majesty from any person liable therefor by action in the Supreme Court of British Columbia, and it shall not in any case be necessary to take the proceedings authorised by sections 7 to 11 of this Act. 1900, c. 35, s. 2.

24. Supreme Court may determine what property liable to duty.—A Judge of the Supreme Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount thereof and the time or times when the same is payable, and may himself or through any reference exercise any of the powers which by the said sections 7 to 11 are conferred upon any officer or person. 1900, c. 35, s. 3.

25. Action may be brought before time for payment of duty.—Subject to the discretion of the Court as to costs, an action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived. 1900, c. 35, s. 4.

26. Procedure.—In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or wit-

nesses or to take such other proceedings in aid of the action as a plaintiff has or may take in an ordinary action. 1900, c. 35, s. 5.

27. Issues, trial of.—Where for the better determining any question raised in any such action the Court deems it advisable to order the trial of an issue or issues, it may give such directions in that behalf as it deems expedient. 1900, c. 35, s. 6.

28. References.—In case the Court shall think fit at any time to direct a reference, such reference may be to an officer of the Court as provided by the Supreme Court Rules, or to any other person. 1900, c. 35, s. 7.

29. Appeal.—An appeal shall lie in an action brought under this Act wherever an appeal would lie if the action were between subject and subject, and to the like tribunal. 1900, c. 35, s. 8.

30. Declaration by Court that property transferred before death subject to duty.—Where any property which has, previous to the death of a person whose estate is subject to duty, been conveyed or transferred to some other person is declared liable to duty, the Court may declare the duty to be a lien upon the property and may make such declaration, although the amount of such duty has not been ascertained, and where any property which, had it remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person, would have been liable to duty, has been conveyed or transferred to any purchaser for valuable consideration, the Court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which such property would have been subject as aforesaid. 1900, c. 35, s. 9.

31. Registration of caution that property subject to Crown lien.—In case it is claimed that any land or money secured by any mortgage or charge upon land is subject to duty, the Minister of Finance, or the solicitor acting in his behalf, may, when deemed necessary, cause to be registered in the proper registry office, a caution stating that succession duty is claimed by the Minister of Finance in respect of the said land, mortgage or charge on account of the death of the deceased, naming him, and any subsequent dealing with such land, mortgage or charge shall be subject to the lien for such duty, but nothing herein contained shall affect the rights of the Crown to claim a lien independently of the said caution. 1900, c. 35, s. 10.

32. Application of preceding sections.—The preceding sections 23 to 31, both inclusive, shall apply to the estates of all persons in respect of which duty is claimed, whether such persons have died before or shall die after the passing of this Act. 1900, c. 35, s. 11.

33. Remedies to be in addition to those otherwise provided.—The remedies in sections 23 to 32, both inclusive, provided, shall be in addition to those provided by the other provisions of this Act. 1900, c. 35, s. 16.

34. Lieut.-Governor may make rules.—The Lieutenant-Governor in Council may make regulations for carrying into effect the provisions of this Act, which shall be published forthwith in the British Columbia Gazette, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations, and if the Legislature is

35. Repeal clause.—The "Succession Duty Act," being chapter 175 of the Revised Statutes of 1897; chapter 68 of the Statutes of 1899; chapter 35 of the Statutes of 1900, and chapter 53 of the Statutes of 1901, are hereby repealed.

36. Commencement.—This Act shall come into force on the 1st day of July, 1907.

SCHEDULE A.

FORM 1.

AFFIDAVIT OF VALUE AND RELATIONSHIP.

This affidavit is to be made by the applicant, or one of the applicants, applying for letters.

"SUCCESSION DUTY ACT" (British Columbia.)

(Section 5.)

CANADA,
PROVINCE OF BRITISH COLUMBIA,
COUNTY OF

In the matter of the Estate of
late of the of , in the
of , deceased.
I.

make oath and say:--

That the applicant for letter to the
estate of , who died on or about the
day of , A. D. 190 , domiciled in

That _____ have caused application to be made in the office of the Registrar of the above-named Court that letter be granted to the estate of the said _____ by the said Court

That have made full, careful and searching enquiry for the purpose of ascertaining what real and personal property and effects the said was possessed of, or entitled to, at the time of h death, together with the market value thereof respectively.

That have according to the best of knowledge, information and belief set forth in the Inventory herewith exhibited, marked "X", a full, true and particular account of all the real and personal estate of the said , or of which the said was possessed, or to which he was entitled at the time of his death together with the market value as at the *date of death* of each and every asset forming part of the said real and personal estate and particularised in the said Inventory. The said Inventory includes all real and personal estate over which the deceased had and exercised absolute power of appointment. The gross value of the said estate as at date of deceased's death was \$

That have included in said Inventory every security, debt and sum of money outstanding due or payable to, or standing to the

credit of the said deceased at the time of h death, and in estimating the value thereof have included all the interest due, payable, chargeable and accruing due thereon up to the death of the said deceased.

That, save and except what is set forth in the said Inventory, the said was not, to the best of knowledge, information and belief, at the time of h death possessed of, or entitled to, any debt or sum of money, or any security, pledge or undertaking for the payment of any money to h on any account whatsoever, or to any leasehold or other personal estate, goods, chattels, or effects in possession or reversion absolutely or contingently or otherwise howsoever.

That in the said Inventory is included all the property of the said situate outside of this Province, as well as the property situate within the Province.

That, save and except what is set forth in the said Inventory, the said was not, to the best of knowledge, information and belief, at the time of h death seised of, or entitled to, any real estate in possession, remainder and reversion absolutely or contingently or otherwise howsoever

That to the best of knowledge, information and belief the said deceased did not voluntarily transfer by deed, grant or gift made in contemplation of h death, or made, or intended to take effect in possession or employment after h death, any property or any interest therein, or income therefrom to any person in trust or otherwise by reason whereof any person is or shall become beneficially entitled in possession or expectancy in or to the said property or income thereof.

That the best of knowledge, information and belief the said deceased did not at any time within twelve months previous to the date of h death transfer by way of donatio mortis causa, or purporting to operate as an immediate gift inter vivos, whether by way of transfer, delivery, declaration of trust, or otherwise, any property whatsoever.

That to the best of knowledge, information and belief, the said deceased did not at any time previous to the date of h death transfer any property of which property the bona fide possession was not assumed by the donee immediately upon the gift, and thenceforth retained to the entire exclusion of the donor or any benefit to h by contract or otherwise.

That to the best of knowledge, information and belief, the said deceased did not transfer or cause to be transferred, to or vested in h self and any person jointly any property to which was absolutely entitled by purchase or investment, or in any other manner whatsoever, so that the beneficial interest therein or in some part thereof passed or accrued by survivorship on h death to such other person.

That to the best of knowledge, information and belief, the said deceased was not at the time of h death a party to any past or future settlement, including any trust, whether expressed in writing or otherwise, whether made for valuable consideration or not, as between the settlor and any other person, and not taking effect as a will whereby an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to h self the right by the exercise of any power to restore to h self, or to reclaim the absolute interest in such property or the proceeds of

the sale thereof or otherwise re-settle the same or any part thereof.

That to the best of knowledge, information and belief, no annuity or other interest had been purchased or provided by the said deceased, either by himself alone or in concert or by arrangement with any other person.

That have in the Inventories respectively marked "X" and "Y," hereto annexed, set forth the assets, debts and liabilities of the deceased and the names of the several persons to whom the property of the said deceased will pass, the degree of relationship, if any, in which they stand to the deceased, their addresses so far as can ascertain them, and the nature and value of the property passing to each of these persons respectively.

Sworn before me at
in the of
this day of , 190
A Commissioner, etc.

Inventory X.

IN THE

"SUCCESSION DUTY ACT" (British Columbia.)

In the matter of deceased, late of the
of , in the County of

Give full value of property, setting out incumbrances (if any) in detail separately.	REAL ESTATE.	Principal.	Interest.	Total.
Moneys secured by Mortgage.		Principal.	Interest.	Total.
Securities for Money, including Life Insurance and Cash.		Principal.	Interest.	Total.

Inventory Y.

IN THE

“SUCCESSION DUTY ACT” (British Columbia.)
 In the matter of the estate of deceased, late of the
 of in the County of

Name.	Relationship.	Address.	Property Passing	Value.

This is Inventory “Y” referred to in the affidavit of Value of
 Relationship of
 Sworn to at on the day of , A.D. 190

A Commissioner, etc.

FORM 2.

NOTICE OF APPLICATION FOR LETTERS.

“SUCCESSION DUTY ACT” (British Columbia.)

(Section 5.)

IN THE

In the matter of the estate of deceased.

Strike out the irrelevant words.—Notice is hereby given
 that application for letters probate, of administration, administra-
 tion with the will annexed, has been received as herein set forth:—

Name of deceased.

Date of death.

Domicile at death.

Name or names of applicant or applicants.

Name of applicant's solicitor.

Value of assets in British Columbia.

Value of assets, if any, elsewhere than in British Columbia.

Dated at , this day of , 190

The Hon. the Minister of Finance
of the Province of British Columbia, Victoria, B. C.

Registrar.

FORM 3.

BOND BY APPLICANTS FOR LETTERS.

"SUCCESSION DUTY ACT" (British Columbia).

(Section 5.)

IN THE

In the matter of the estate of _____ deceased.

Know all men by these presents that we _____, of
 the _____ of _____, in the _____ County
 of _____, of the _____, in the County of _____, of
 the _____ of _____ in the County of _____, are
 severally bound unto His Majesty the King in the respective sums
 following: the said _____ in the sum of \$ _____, the said _____
 in the sum of \$ _____, and the said _____ in the sum of \$ _____, to be paid
 to the Minister of Finance of the Province of British Columbia for
 the time being, for which payment well and truly to be made each
 of us respectively binds himself, his heirs, executors and adminis-
 trators firmly by these presents.

Sealed with our seals.

Dated the _____ day of _____, in the year of our Lord A.D. 190

The condition of this obligation is such that if the above named
 the _____ of all the property of

late of the _____ of _____, in the _____ County
 of _____ deceased, who died on or about the _____ day of
 A.D. 190 _____, do well and truly pay, or cause to be paid, to the
 Minister of Finance of the Province of British Columbia for the
 time being, representing His Majesty the King in that behalf, any
 and all duty to which the property, estate and effects of the
 said _____ coming into the hands of the said _____ may
 be found liable under the provisions of the "Succession Duty Act,"
 within two years from the date of the death of the said _____, or
 such further time as may be given for payment thereof under the
 provisions of said Act, or such further time as he may be entitled
 to otherwise by law for payment thereof, then this obligation shall
 be void and of no effect, otherwise the same to remain in full force
 and virtue.

Signed, sealed and delivered in }
 the presence of _____ }

AFFIDAVIT OF JUSTIFICATION.

COUNTY OF _____

To Wit:

I, _____, one of the sureties in the annexed bond
 named, make oath and say as follows:—

(1). I am seised and possessed, to my own use, of property in
 the Province of British Columbia of the actual value of _____ dol-
 lars, over and above all charges upon and incumbrances affecting
 the same.

(2). I am worth the sum of _____ dollars, over and above my
 just debts, and any sum for which I am liable as surety or other-
 wise, except upon the said bond.

(3) My post office address is as follows:—

Sworn before me at _____ }
 in the County of _____, this }
 day of _____, 190 _____ }

A Commissioner, etc.

AFFIDAVIT OF JUSTIFICATION.

COUNTY OF

To Wit:

I, _____, one of the sureties in the annexed bond named, make oath and say as follows:—

(1). I am seised and possessed, to my own use, of property in the Province of British Columbia of the actual value of _____ dollars, over and above all charges upon and incumbrances affecting the same.

(2). I am worth the sum of _____ dollars, over and above my just debts, and any sum for which I am liable as surety or otherwise, except upon the said bond.

(3). My post office address is as follows:—

Sworn before me at _____
in the County of _____, this _____ }
day of _____, 190 . }

A Commissioner, etc.

AFFIDAVIT OF EXECUTION.

COUNTY OF

To Wit:

I, _____, in the County of _____, make oath and say as follows:—

(1). I am the person whose name is subscribed to the annexed Bond as the attesting witness to the execution thereof, and the signature _____ set and subscribed thereto, as such attesting witness, is of my proper handwriting, and my name and addition are correctly above set forth.

(2). I was present and did see the said Bond duly signed and executed by _____, therein named.

(3). I am well acquainted with the said

Sworn before me at _____
in the County of _____, this _____ }
day of _____, 190 . }

A Commissioner, etc.

FORM 4.

(as amended by 8, Edw. VII, c. 46, s. 9.)

DIRECTION TO SHERIFF TO MAKE VALUATION.

"SUCCESSION DUTY ACT" (British Columbia.)

(Section 7.)

IN THE
In the matter of the estate of _____, deceased.
To the Sheriff of the County of _____

I hereby direct that you do make a valuation and appraisement of all property of the deceased and report to me the result of such valuation and appraisement forthwith after making the same.

Dated at Victoria, this _____ day of _____ A. D. 190 .

Registrar.

FORM 5.

NOTICE BY SHERIFF.

"SUCCESSION DUTY ACT" (British Columbia.)

(Section 8.)

IN THE

In the matter of the estate of _____, deceased.

To

Take notice that by an order made by the Registrar of the
 on the _____ day of _____, 19____, I have been directed
 to make a valuation and appraisalment of the property which the
 said _____ died seised or possessed of or entitled
 to, and further take notice that pursuant to the said order, I will
 on the _____ day of _____ at _____ of the
 clock, in the _____ noon, at _____, proceed to make
 such valuation and appraisalment, of which all parties are required
 to take notice and govern themselves accordingly.

Dated at _____, this _____ day of _____ A. D. 190____

Sheriff of the _____ of _____

FORM 6.

REPORT OF SHERIFF.

"SUCCESSION DUTY ACT" (British Columbia.)

(Section 8.)

IN THE

In the matter of the estate of _____, deceased.

To the Registrar of said Court:

Pursuant to an order made in this matter and dated the
 day of _____ A. D. 19____, directing me to make a
 valuation and appraisalment of the property which the above-named
 deceased died possessed or seised of, or entitled to, having duly
 notified all parties (or as the case may be) entitled thereto, I pro-
 ceeded in the presence of _____ to make an
 appraisalment and valuation of said property at its fair market
 value, and do value and appraise the same at the sum of \$ _____,
 as appears from the schedule hereto annexed.

Dated at _____, this _____ day of _____ A. D. 190____

Sheriff of the _____ of _____

FORM 7.

CERTIFICATE OF DISCHARGE.

"SUCCESSION DUTY ACT" (British Columbia.)

(Section 14.)

In the matter of the estate of _____, late of
 _____ in the _____ County of _____, deceased.

This is to certify that the full amount of Succession Duty pay-

B. C. SUCCESSION DUTY ACT.

able on the estate of the above-named deceased, as set out in the affidavits and papers filed in my office, has been paid, and the property therein set forth is therefore discharged from any further claim to Succession Duty.

This certificate is given under the terms and subject to the conditions of section 14 of the "Succession Duty Act."

Dated at Victoria, this _____ day of _____ 190

Minister of Finance.

FORM 8.

(as amended by 8, Edw. VII, c. 46, s. 10.

CONSENT TO ISSUE OF LETTERS WHERE ESTATE IS
LIABLE TO SUCCESSION DUTY.

"SUCCESSION DUTY ACT" (British Columbia.)

To the Registrar of the

Court of

In the matter of the estate of _____, deceased.

SIR,—Having perused the affidavit of value and relationship filed in this matter, and being of the opinion, upon the facts therein deposed to, that the property of the deceased is liable to Succession Duty, I hereby consent to letters _____ being issued, and herewith enclose statement of amount of succession Duty due.

Yours truly,

Minister of Finance.

190 . _____

SCHEDULE B.

SUCCESSION DUTY ACT."

(Section 19.)

Return of amounts unpaid for Succession Duty, for which bonds are held as security by the Registrar of the Court at

Name of Estate.	Date of Bond.	Names of Sureties	Amount of Bond.	Amount due for Succession Duty.

Dated at _____, this _____ day of _____, 19 .

The Hon. the Minister of Finance,
Victoria, B. C.

Registrar.

SCHEDULE C.

(Section 9.)

Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.	Age.	Expectation Years.
0	57.64	25	38.44	50	20.51	75	6.56
1	56.64	26	37.65	51	19.84	76	6.17
2	55.64	27	36.93	52	19.17	77	5.85
3	55.09	28	36.18	53	18.50	78	5.43
4	54.83	29	35.47	54	17.81	79	5.22
5	53.83	30	34.75	55	17.14	80	4.93
6	53.08	31	34.04	56	16.53	81	4.61
7	52.67	32	33.30	57	15.90	82	4.36
8	55.17	33	32.59	58	15.26	83	4.04
9	50.80	34	31.86	59	14.64	84	3.84
10	49.89	35	31.15	60	13.99	85	4.58
11	49.38	36	30.41	61	13.42	86	3.44
12	48.38	37	29.69	62	12.83	87	3.26
13	47.50	38	28.97	63	12.26	88	3.05
14	46.60	39	28.27	64	11.72	89	2.94
15	45.90	40	27.57	65	11.17	90	2.68
16	45.14	41	26.85	66	10.65	91	2.46
17	44.23	42	26.14	67	10.12	92	2.25
18	43.39	43	25.42	68	9.61	93	2.34
19	42.64	44	24.69	69	9.13	94	2.90
20	41.98	45	23.98	70	8.68	95	1.90
21	41.23	46	24.27	71	8.16	96	1.06
22	40.51	47	22.57	72	7.65	97	1.00
23	39.84	48	21.89	73	7.24	98	0.50
24	39.15	49	21.20	74	6.83		

BRITISH COLUMBIA PROBATE DUTY ACT

7 Edw. VII, chap. 31

AN ACT TO RATIFY AN ORDER IN COUNCIL REGARDING
PROBATE DUTY.

[27th March, 1907.]

Preamble.—Whereas, by an Order in Council approved the 4th day of May, 1906, it is provided as follows:—

“On every probate and letters of administration a charge of one per cent. shall hereafter be collected on the value of an estate to father, mother, husband, brother or sister of deceased; and in case of all other legatees, or next of kin, except wife or children, five per cent. on the value of the estate shall be charged. No charge shall be made on the value of the estate to wife or children. The costs of any action or proceeding in probate shall be the same as in other cases, and shall be regulated by this schedule.”

And whereas it is advisable to ratify said Order in Council:

Therefore, His Majesty, by and with the advice and consent of

the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the "Probate Duty Act, 1907."

2. Ratification.—The above mentioned Order in Council is hereby ratified and confirmed, and such ratification and confirmation shall relate back to the date of the passing of said Order in Council.

NEW BRUNSWICK

NEW BRUNSWICK SUCCESSION DUTY ACT

R.S.N.B., 1903, chap. 17.

RESPECTING SUCCESSION DUTIES IN CERTAIN CASES.

1 Short title.—This Chapter may be cited as "*The Succession Duty Act.*" 59 V., c. 42, s. 1.

2.—(1) "Property."—The word "property" in this Chapter includes real and personal property of every description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives. 9 V., c. 42, s. 2.

(2) Life insurance money to be deemed property within the meaning of this section.—Where the deceased had insurance upon his life, whether the insurance moneys are received by, or are payable to, the personal representatives of the deceased, or by or to any other person, such moneys shall be deemed property within the meaning of this section, and part of the estate for the purposes of this Chapter, and shall be liable to duty hereunder in all respects as if the beneficiary or person entitled to such insurance had received the same by will or intestacy of the deceased. 2 Edw. VII., c. 31, s. 2, *am.*

3. "Sheriff." "Registrar." "Transfer," or "Transferred," to mean and include any disposal of property or interest therein in trust, etc. Shares of company. Transfer since April 7th, 1892. Presumption.—The word "sheriff" shall include "Coroner," and the word "Registrar" shall mean "Registrar of Probate." The word "transfer or transferred" in *The Succession Duty Act, 1892*, in *The Succession Duty Act, 1896*, and in any amending Act to said Acts, and in this Chapter, shall, without limitation or restriction in its meaning by reason of this section, be held to mean and include any disposal of property or interest therein by a transferor in trust, or any making over or vesting of the same in any incorporated company, or any gift, conveyance or distribution of shares of an incorporated company in the life-time of the owner; and any property or interest in any property transferred in the lifetime of the deceased since the seventh day of April, 1892, voluntarily or without adequate consideration, shall be deemed *prima facie* to have been made with intent to evade the payment of duties under *The Succession Duty Act*,

1892, *The Succession Duty Act 1896*, and under this Chapter. 59 V., c. 42, s. 3, *am.*

4. To what property Chapter shall not apply.—This Chapter shall not apply:—

(1) To any estate the value of which, after payment of all debts and expenses of administration, does not exceed \$5,000; nor

(2) To property given, devised or bequeathed for religious, charitable or educational purposes; nor

(3) To property passing under a will, intestacy or otherwise, to or for the use of the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the aggregate value of the property of the deceased does not exceed \$50,000 in value. 59 V., c. 42, s. 4; 60 V., c. 36, s. 1.

5.—(1) Property liable to succession duty.—Save as aforesaid, all property, whether situate in this Province or elsewhere, other than property being in the United Kingdom of Great Britain and Ireland and subject to duty, whether the deceased person owning or entitled thereto had a fixed place of abode in or without this Province at the time of his death, passing either by will or intestacy, or any interest therein or income therefrom, which shall be voluntarily transferred in contemplation of the death of the grantor or bargainor, or be transferred by any transfer made or intended to take effect in possession or enjoyment after his death, to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled, in possession or expectancy, to any property, or the income thereof, which shall have been or shall be voluntarily transferred, or transferred without adequate consideration, for the purpose of evading the payment of succession duty to the Crown, or by any transfer, the effect of which shall have been, or shall be, to enable the transferee to escape payment of duty to the Crown, shall be subject to a succession duty, to be paid for the use of the Province over and above the fees provided by the Chapter of these Consolidated Statutes relating to Probate Courts, or any Acts in amendment thereof, as follows (56 V., c. 42, s. 5 *am.*):

(a) **Duty where property exceeds \$50,000 in value and passes to certain persons.**—Where the aggregate value of the property of the deceased exceeds \$50,000, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, brother, sister, daughter-in-law, or son-in-law of the deceased, the same, or so much thereof as so passes (as the case may be) shall be subject to a duty of \$1.25 for every \$100 of the value up to the \$50,000, and \$2.50 for every \$100 of the value in excess of \$50,000. 59 V., c. 42, s. 5 (1).

(b) **Duty where property exceeds \$200,000 in value.**—Where the aggregate value of the property exceeds \$200,000, the whole property shall be subject to a duty of \$5.00 for every \$100 of the value. 59 V., c. 42, s. 5 (2).

(c) **Duty where property exceeds \$10,000 in value, and passes to certain persons.**—Where the value of the property exceeds \$10,000, so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father or mother, or to any descendant of a brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last mentioned brother or sister, or to a grandchild or other descendant of the de-

ceased, except a son or daughter, shall be subject to a duty of \$5.00 for every \$100 of the value: 1 Edw. VII., c. 25, s. 1.

(d) **Duty where property exceeds \$5,000 in value, and passes to certain persons.**—Where the value of the property of the deceased exceeds \$5,000, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, such part shall be subject to a duty of ten per cent on the value 59 V., c. 42, s. 5 (4).

(e) **Exemption where property passing to any one person does not exceed \$200 in value.**—Provided that where the whole value of any property devised, bequeathed or passing to any one person under a will or intestacy does not exceed \$200, the same shall be exempt from the payment of duty imposed by this section. 59 V., c. 42, s. 5 (5).

(f) **Duty doubled where beneficiary resides abroad.**—Where the property of a deceased person liable to succession duty under this Chapter, or any part thereof, or any legacy, charge or annuity payable out of the same, goes to any person residing out of the Province, the duty payable on the amount or portion going to such person shall be double the amounts hereinbefore specified. 59 V., c. 42, s. 5 (6).

(2) **Exception where property abroad owned by a person not domiciled in Province. Exception.**—The provisions of this section are not intended to apply, and shall not apply to property outside this province, owned at the time of his death by a person not then domiciled within the Province, except so much thereof as may be devised or transferred to a person or persons residing within the Province. 60 V., c. 36, s. 2, *am.*

6. Executor, etc., to file inventory and list of beneficiaries with their degree of relationship to deceased.—An executor or administrator obtaining letters testamentary, or letters of administration, or ancillary letters to the estate of a deceased person shall within thirty days after the issue of such letters to him, make and file with the Registrar of Probate a full, true and correct statement under oath showing:

(a) A full itemized inventory of all the property of the deceased person, and the market value thereof;

(b) **Bond for payment of duty.—Default in filing inventory or bond.**—The several persons to whom the same passes under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator shall, as soon after the issue of letters testamentary or of administration as the inventory has been filed, deliver to the Registrar a bond in a penal sum equal to ten per centum of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due payment to His Majesty of any duty to which the property coming to the hands of such executor or administrator of the deceased may be found liable. In case the executor or administrator, or either of them, shall neglect or refuse to furnish, procure and file such inventory within the required time, or give the required bond, the letters granted to such executor or administrator may be cancelled by the Judge of Probate, and new

letters may issue to other parties who may be entitled thereto. 59 V., c. 42, s. 6, *am.*

7. Appraisement by Sheriff at instance of Receiver-General.—In case the Receiver-General of the Province is not satisfied with the value so sworn to, the Registrar of Probate of the county in which any property subject to the payment of the said duty is situate, shall, at the instance of the Receiver-General, his solicitor or agent, direct in writing that the Sheriff, or a coroner of the county, shall make a valuation and appraise the said property. 59 V., c. 42, s. 7.

8. Proceedings on appraisement by Sheriff.—Report.—Remuneration to Sheriff.—In such case the Sheriff shall forthwith give due and sufficient written notice to the executors and administrators, and to such other persons as the Registrar may by order direct, of the time and place at which he will appraise such property; and he shall appraise the same accordingly at its fair market value, and make a report thereof in writing to the Registrar, together with such other facts in relation thereto as the Registrar may by order require, and such report shall be filed in the office of the Registrar. The Sheriff shall be entitled to receive the sum of \$5 per diem for services performed under this Chapter, and his actual and necessary travelling expenses and the same shall be paid to him by the Receiver-General of the Province. 59 V., c. 42, s. 8.

9. Assessment by Registrar of value of property, and duty thereon.—Notice.—Certain values to be fixed by actuary.—Certificate by actuary.—The Registrar shall, upon receiving the inventory required by section 6 of this Chapter, or the report of the Sheriff, if a report shall be made by him, assess and fix the then cash value of all estates, interests, annuities and life estates, or terms of years growing out of such estates, and the duty to which the same is liable, and shall immediately give notice thereof by registered letter to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest, shall, for the purposes of this Chapter, be determined by the rule, method, and standards of mortality and of value to be fixed by the actuary named by the Receiver-General; and the actuary shall, on the application of any Registrar, determine the value of such future or contingent or limited estate, income or interest, upon the facts contained in such report, and certify the same to the Registrar, and his certificate shall be conclusive as to the matters dealt with therein. 59 V., c. 42, s. 9.

10. Appeal to Judge of Probate from appraisement or assessment.—Jurisdiction of Judge of Probate.—When decision to be final.—Appeal to Supreme Court.—Any person dissatisfied with the appraisement or assessment, may appeal therefrom to the Judge of Probate of the county within thirty days after the making and filing of such assessment, on giving security approved by the Judge of Probate, to pay all costs, together with whatever duty shall be fixed by said Court; and upon such appeal the Judge of said Court shall have jurisdiction to determine all questions of valuation and of the liability of the appraised estate, or any part thereof, for such duty, and the decision of the Judge of Probate shall be final, unless the property in respect of which such appeal is taken shall exceed in value the sum of \$10,000, when a further appeal shall lie from the decision of the Judge to the Supreme Court, whose decision shall be final. 59 V., c. 42, s. 10.

11. When bequest to executor, or trustee in lieu of commission, liable for duty.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this Chapter, is made to an executor or trustee in lieu of commission or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess shall be liable to said duty, and the Judge of the Probate Court having jurisdiction in the case shall fix such compensation. 59 V., c. 42, s. 11.

12.—(1) When duty payable on future estates or interests.—Valuation of property.—In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or come into actual enjoyment after the expiration of one or more life estates, or a period of years, the duty on such future estate or interest shall not be payable, nor interest begin to run thereon, until the person or persons liable for the same shall come into actual possession of such estate or interest, by the determination of the estate or estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid. 59 V., c. 42, s. 12 (1).

(2) Proviso. Judge of Probate to make a decree showing amount of duty, etc.—Valuation of property in fixing duty.—Provided, however, that in all cases under this section, it shall be the duty of the Judge of Probate having jurisdiction in the case, to make a decree showing the amount of such duty, and the property liable thereto, setting the same out, as far as possible, with sufficient detail as to enable it to be identified, giving the name of the person or persons to whom it is devised or bequeathed, or descends, together with the name or names of the person or persons having the life estate, or estate for years, or other intermediate interest therein; the Judge, in making such decree, shall fix the duty, based upon the then value of the property, but in case there shall be depreciation or increase in value of the property liable to the duty, before the duty becomes payable, the Receiver-General shall accept, or be entitled to receive payment of such duty based on such lessened or increased value, as the case may be. 59 V., c. 42, s. 12 (2).

(3) Receiver-General to have copy of decree.—Copy to be registered with Registrar of Deeds.—Decree to be a lien.—A copy of such decree, certified by the Registrar of the said Court of Probate under the seal of the Court, shall be forwarded to the Receiver-General, and a copy thereof certified in like manner, shall be registered in the office of the registrar of deeds of the county of which the deceased was an inhabitant at the time of his death, and also of every other county where any portion of the estate liable to such duty may be situate, which certificate shall be registered, if it purports to be under the hand of the Registrar, and be under the seal of the Court, without further proof, and shall bind and continue to be a lien upon all such estate until discharged as hereinafter provided. 59 V., c. 42, s. 12 (3).

(4) Bond to secure payment of duty payable "in future."—Effect of default in giving bond.—When it appears to the Judge of Probate that it would be expedient, owing to the nature of the estate, in order to secure the payment of the duty so payable at a future date, he shall require the person or persons then in the possession or enjoyment of the estate and property, or any por-

tion thereof, to give security to the Receiver-General, by bond, with sureties to his satisfaction, and conditioned for the payment of all succession duties under this Chapter, and in case of the neglect or refusal of such person to give such bond, the amount of the succession duty shall immediately become payable by the person so holding or enjoying such property, and payment thereof may be enforced against such person so holding or enjoying such property, and payment thereof may be enforced against such property, or said property in respect of which the duty has accrued. 59 V., c. 42, s. 12 (4).

(5) Discharge of lien by certificate of Receiver-General.—A certificate of the Receiver-General, that such duty has been paid, duly acknowledged or proved in the manner as conveyances are required to be acknowledged or proved in order to their being registered, on being registered shall discharge such lien. 59 V., c. 42, s. 12 (5).

(6) Cost of decree, etc., to be paid by estate.—The cost of obtaining such decree and registering the same shall be borne by the estate, and shall be paid by such parties, in such proportions, and in such manner as the Judge of Probate may direct. 59 V., c. 42, s. 12 (6).

13. Duty to be paid at death of deceased, or within 12 months thereafter.—Interest.—Lien.—The duties imposed by this Chapter, unless otherwise herein provided for, shall be due and payable to the Receiver-General of the Province at the death of the deceased, or within twelve months thereafter; and if the same are paid within twelve months, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per cent. per annum, shall be charged and collected, from the death of the deceased, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect of which they are payable until the same are paid. 59 V., c. 42, s. 13.

14. Extension of time for payment of duty.—The Receiver-General may make an order upon the application of any person liable for the payment of said duty, extending the time fixed by law for the payment thereof, where it appears that payment within the time prescribed by this Chapter is impossible owing to some cause over which the person liable has no control. 59 V., c. 42, s. 14.

15. Executor, etc., to deduct duty before delivering property.—Any administrator, executor, or trustee having in charge or trust, any estate, legacy or property subject to the said duty shall deduct the duty therefrom, or collect the duty thereon, upon the appraised value thereof, from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 59 V., c. 42, s. 15.

16. Executor to have power to sell to pay duty.—Executors, administrators and trustees shall have the power to sell so much of the property of the deceased as will enable them to pay said duty, in the same manner as they may be enabled by law to do for payment of debts of the testator or intestate. 59 V., c. 42, s. 16.

17. Executor to pay duty forthwith.—Every sum of money retained by an executor, administrator, or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Receiver-General of the Province, or as he may appoint. 59 V., c. 42, s. 17.

18. Refunding duty upon subsequent return of property to pay debts.—When any debts shall be proved against the estate of a deceased person, after the payment of legacies, or distribution of property, from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir, or next of kin, a proportion of the duty so paid shall be repaid by the executor, administrator or trustee if the said duty has not been paid to the Receiver-General of the Province, or by the Receiver-General, if it has been so paid. 59 V., c. 42, s. 18.

19. Duty payable by foreign executor, etc., on stock, etc., of company in this Province.—When any foreign executor, administrator, or trustee assigns or transfers any stock, funds or debentures of any company or corporation in this Province, standing in the name of a deceased person, which are liable to the said duty, the said duty, if not previously paid, shall be paid to the Receiver-General of the Province, on the transfer thereof, otherwise the company or corporation permitting such transfer shall become liable to pay such duty; provided that such company or corporation had notice before such transfer that the said stock, or bonds, or debentures were liable to the said duty. 59 V., c. 42, s. 19.

20. Proceedings to enforce payment of duty.—If it appears to the Judge of Probate that any duty accruing under this Chapter has not been paid according to law, he shall make an order directing the persons interested in the property liable to the duty, to appear before the Court on a day certain, to be named therein, and show cause why said duty should not be paid. The service of such order and the time, manner and proof thereof, and the hearing and determining thereon, and the enforcement of the judgment of the Court thereon, shall be according to the practice in or upon the enforcement of a judgment of the Supreme Court. 59 V., c. 42, s. 20.

21. Costs.—No costs shall be allowed in or by the Probate Court, except as herein otherwise provided, in respect of any of the proceedings therein taken under this Chapter. In case of any appeal to the Supreme Court, the costs of appeal shall be according to the Supreme Court scale. 59 V., c. 42, s. 21.

22. Security by Registrar of Probate for performance of duties under this Chapter.—Acts relating to security by public officer to apply.—Every Registrar of a Court of Probate shall, before entering upon the duties of his office, or in the case of Registrars appointed prior to the passing of this Chapter, immediately hereafter deliver to the Receiver-General, a bond or other security or securities, in such sum, and with such sufficient surety or sureties as may be approved of by the Lieutenant-Governor-in-Council, for the due and punctual performance of the duties imposed upon such Registrar by this Chapter, and that he will not fail to account for any duty payable under this Chapter which may come to his hands under any lawful authority to him to collect the same; and the provisions of any Act relating to the giving of security by public officers shall, when not inconsistent with this Chapter, apply to such bonds or other securities. 59 V., c. 42, s. 22 am.

23. Semi-annual reports by Registrar of Probate to Attorney-General respecting estates, etc.—It shall be the duty of every Registrar of Probate to prepare and forward to the Attorney-General, on or immediately after the second day of January and the second day of July in each year, a statement of all estates in which

probate or letters of administration have been granted by the Judge of the Court of which he is such Registrar, in respect to which the accounts have not been finally passed in such Probate Court, showing the value of the estate as stated in the petition for probate or letters of administration, together with the names and residences of the next of kin, in cases of intestacy, and with the names and residences of the devisees or legatees in other cases, and also the amount to which each legatee or devisee is entitled, as nearly as such Registrar is able to state the same; together with a statement as to whether the executor or administrator has complied with the provisions of this Chapter, and if not, in what particulars the same remain uncomplished. 1 Edw. VII., c. 25, s. 3.

24. Agreement between executors, etc., and Receiver-General, under certain circumstances, as to amount of duty.—**Lien.**—It shall be lawful for the executors and trustees of the estates of deceased persons liable to succession duties under this Chapter, in cases where the Lieutenant-Governor-in-Council may consider it in the public interest, as well as just and equitable to the persons beneficially interested in the estate of such persons so to do to, agree to and with the Receiver-General of the Province as to the amount to be paid to the said Receiver-General as the succession duty upon any estate, and such amount, so agreed upon, shall be a first charge upon the estate of the deceased, and after payment of the same such executors or trustees shall administer the residue of such estate according to the provisions of the will in the case in which such settlement is made under this Chapter, as near as may be as if the estate of the deceased in such case had been less than it is by the amount of the duty paid under the terms of the settlement herein provided for. 59 V., c. 42, s. 23.

25. Inquiry into correctness of account of property, etc.—Whenever there shall be doubts as to whether all the property and estate of any deceased person, or which such person had prior to his decease transferred, has been fully accounted for, inventoried or disclosed for the purposes of succession duty under *The Succession Duty Act, 1892*, *The Succession Duty Act, 1896*, or this Chapter, the Lieutenant-Governor-in-Council may, by order in Council, authorize and direct an inquiry to be made for the purpose of ascertaining whether the whole of the property of any person subject to duty, has been made known, and may duly commission any person (the fact that such person is a Member or officer of the Provincial Government not being a disqualification for such appointment to make such inquiry, and such commissioner so appointed shall be fully authorized and empowered to inquire:

(a) **Subjects of inquiry.**—Into the value, nature and particulars of all property of the deceased;

(b) Into any and all transfers of any property which the commissioner may suspect or believe to have been transferred with intent to evade payment of duties under *The Succession Duty Act, 1892*, *The Succession Duty Act, 1896*, or this Chapter;

(c) Into the relationship of any person interested in such property to the deceased person; and upon such inquiry to adjudge and determine,

(d) What property, if any, has been transferred with intent to evade the payment of succession duty aforesaid, and what property is subject to duty;

(e) What amount, if any, is payable as succession duty to the

Crown in respect of any property whatever of the deceased, or of any property which has been by him, the said commissioner, adjudged to have been transferred to evade the duty, and the persons from whom payment shall be made; and for the purpose of such inquiry and adjudication, and under and by virtue of the commission issued to him as aforesaid, the commissioner shall be and he is hereby invested with all the powers and authorities conferred upon a commissioner appointed under Chapter 12, of these Consolidated Statutes, providing for investigations by commission, and for certain departmental inquiries, or any Act in amendment thereof. In the case of any person dying after the passage of this Chapter, such order in Council shall only be made within three years from the date of death; and in the case of persons heretofore deceased, shall only be made within three years from the passage hereof. 59 V., c. 42, s. 24.

26. Non-attendance by witness.—Any person summoned as a witness under the last preceding section, or in pursuance thereof, who shall neglect or refuse to obey the summons in all respects, shall, for each and every such neglect or refusal, incur a penalty of one hundred dollars, to be enforced on behalf of the Crown before any Court competent jurisdiction. 59 V., c. 42, s. 25.

27.—(1) Double duty in case of transfer to evade payment of duty.—Remedy for recovery of duty in such case.—Evidence of transfer having been made to evade duty.—Any person to whom a transfer has been or may be hereafter made, with intent of evading the payment of succession duties under *The Succession Duty Act, 1892*, *The Succession Duty Act, 1896*, or this Chapter, or the estate and property of the person making such transfer, according as the same shall be adjudged and determined by the commissioner, shall be liable to the payment of double the amount of duty to which the property so transferred would have been subject if such transfer had not been made and such double duty may be recovered in addition to other remedies provided by this Chapter or any other remedies allowed by law, by action brought on behalf of the Crown in the name of the Receiver-General of the Province in any Court of competent jurisdiction, from the transferee of such property or from the estate of the deceased, as the case may be. In any such action proof that the commissioner had found such duty to be payable in respect of the property so transferred shall be conclusive evidence as to the fact of the transfer having been made to evade such duty, and the Crown shall be entitled to judgment in such action, provided that the transferee, having received notice of the inquiry by the commissioner, and having an opportunity of being heard therein, had either not appeared, or, having appeared, had not appealed against the commissioner's finding as hereinafter provided, or, having taken his appeal, such appeal had been adjudged against him.

2. Exemption from double duty where notice given of transfer.—A transferee and the property transferred may always escape liability to such double duty if notice in writing of such voluntary transfer, or transfer without adequate consideration, be given to the Receiver-General within a reasonable time thereafter, but failure to give such notice shall not raise any presumption against the transferee. 59 V., c. 42, s. 26.

28. Appeal to Governor-in-Council from decision of Commissioner.—Any person against whom the commissioner renders a

decision imposing succession duty, or double duty, under *The Succession Duty Act, 1892*, *The Succession Duty Act, 1896*, or this Chapter, may appeal to the Lieutenant-Governor-in-Council against the decision of the commissioner, but such appeal must be taken, and notice thereof given, with the grounds of such appeal, to the commissioner within thirty days after notice to such person of the decision of the commissioner; and it shall be the duty of the Governor-in-Council to deal with such appeal upon equitable grounds, and the decision of the Governor-in-Council shall be final and conclusive in all matters of fact therein determined. 59 V., c. 42, s. 27, *am.*

29. Judgment, etc., or payment of duty, not a bar to inquiry, or recovery of duty.—No judgment, order or decision by any Court or Judge, whether on appeal or otherwise, rendered in any estate, nor any payment to or acceptance by the Receiver-General of succession duties in any estate, shall bar or preclude the Crown holding or causing the inquiry to be held in the foregoing section authorized, or the commissioner appointed by the Lieutenant-Governor-in-Council from holding such inquiry or adjudicating upon the matters therein inquired into, nor shall bar nor preclude the recovery by the Crown of any succession duties adjudged by the commissioner to be payable to the Receiver-General in addition to any sums previously adjudged to be paid, or paid in respect of succession duties upon the property, or any part of the property of such estate. 59 V., c. 42, s. 28.

30. Application of Chapter.—This Chapter and all the provisions hereof, shall be applicable to the case of any and all persons who have died since the passing of *The Succession Duty Act, 1892*, and to the estate and property of all and any such persons. 59 V., c. 42, s. 29.

31. Regulations by Lieutenant-Governor-in-Council.—Abatement of duty where equitable to do so.—The Lieutenant-Governor may, by order in Council, make any regulations deemed expedient for carrying into effect the provisions of this Chapter, and shall duly publish the same in the Royal Gazette upon the making thereof, and the Lieutenant-Governor-in-Council may also in his discretion abate the whole or any part of the duty imposed by this Act, when, by reason of the liabilities of the estate or other good cause, such abatement would be deemed equitable. 59 V., c. 42, s. 30.

32. Remuneration to Attorney-General.—For his services and disbursements in connection with the collection of the duties payable under this Chapter, the Receiver-General shall each year pay to the Attorney-General, or other officer charged by the Government with the collection of the succession duties, such an amount for such services and disbursements, and as a commission on the collection of such duties, as may be taxed and allowed by the Clerk of the Pleas, but not, however, to exceed five per cent. on the amount of succession duties paid to the Receiver-General during such year. 1 Edw. VII., c. 25, s. 4, *am.*; 2 Edw. VII., c. 31, s. 1.

Sec. 33. (added by 8 Edw. VII, Chap. 12.)

No foreign executor or administrator shall assign or transfer any debentures, bonds, stocks or shares of any bank, or other corporation whatsoever, having its head office in New Brunswick, standing in the name of the deceased person or in trust for him, which are subject to succession duty until such duty is paid, or until security is given, as required by section 6, sub-section (b) of this Act and any such bank or corporation allowing a transfer of any debentures, bonds, stocks or shares contrary to this section shall be liable for such duty.

NOVA SCOTIA

NOVA SCOTIA SUCCESSION DUTY ACT

R. S. N. S. 1900, cap. 14, as amended by 1 Edw. VII., cc. 32 and 33.

1. *Short Title.*—This chapter may be cited as “The Succession Duty Act.” R. S., c. 8, s. 1.

INTERPRETATION.

2. *Interpretation.*—In this chapter, unless the context otherwise requires, the following expressions shall be construed in the manner in this section mentioned:—

(a.) “*Registrar.*”—“Registrar” means the registrar of probate for the county or district in which probate or letters of administration have been granted to the representatives of the deceased.

(b.) “*Executor.*”—“Executor” includes executrix, and “administrator” includes administratrix.

(c.) “*Trustee.*”—“Trustee” includes any person taking upon himself the administration of property affected by any express or implied trust.

(d.) “*Person.*”—“Person” includes a body corporate, company, firm or society.

(e.) “*Property.*” includes real and personal property of every kind and description, and the income therefrom, and every estate and interest therein capable of being devised or bequeathed by will, or passing on the death of the owner to his heirs or personal representatives. R. S., c. 8, ss. 2-3.

APPLICATION.

3. *Chapter not to Apply to.*—This chapter shall not apply:—

(a.) *Estate of Less than \$5,000.*—To any estate the value of which, after payment of the debts and expenses of administration, does not exceed five thousand dollars, or

(b.) *Estate Passing to near Relations and Less than \$25,000.*—To property passing by will, intestacy or otherwise, to or for the father, mother, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased after payment of the debts and expenses of administration does not exceed twenty-five thousand dollars, or

(c.) To property given, devised or bequeathed for religious, charitable or educational purposes, or

(d.) *Property in United Kingdom.*—To property situated in the United Kingdom of Great Britain and Ireland, and subject to succession duty there. 1885, c. 8, s. 4; 1887, c. 6, s. 1; 1900, c. 27, s. 1.

4. *Chapter shall Apply to.*—Save as aforesaid, the following property shall be subject to a succession duty as in this chapter provided, to be paid to Her Majesty for the use of the province:—

(a.) *Property in Nova Scotia.*—All property situated within Nova Scotia, and any interest therein or income therefrom, whether the deceased person entitled thereto was domiciled in Nova Scotia or was domiciled elsewhere, passing either by will or intestacy;

(b.) *Property Transferred in Contemplation of Death.*—All property situated as aforesaid or any interest therein or income therefrom which is voluntarily transferred or conveyed by deed, grant, bargain, sale or gift,

(i) Made in contemplation of the death of the grantor, bargainor, vendor or donor, or

(ii) Made or intended to take effect in possession or enjoyment after such death, to any person in trust or otherwise, or by reason whereof any person becomes beneficially entitled in possession or expectancy to any property or the income thereof;

(c.) *Property Transferred under Instrument not Effective Till after Death.*—All property passing under any disposition made or taking effect after the coming into force of this chapter whereby any person becomes beneficially entitled to such property or the income therefrom upon the death of any other person, or at a time ascertainable only by reference to the death of any other person, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitution;

(d.) *Beneficial Interest Devolving upon Death.*—All property, the beneficial interest in which, or in the income whereof, passes by law upon the death of any person to any other person in possession or expectancy;

(e.) *Joint Property Passing by Survivorship.*—Property vested in two or more persons jointly, the beneficial interest wherein or in any part whereof accrues to either or any of them by survivorship;

(f.) *Property passing under Instrument in Evasion of Chapter.*—Property passing under a disposition purporting to take effect immediately, but, by the effect or in consequence of any engagement, secret trust, or arrangement capable of

being enforced in any court of justice, the beneficial ownership of which property does not *bona fide* pass according to such disposition, but in fact devolves to any person on the death, or at some period ascertainable only by reference to the death, of the person making the disposition; and where any court of competent jurisdiction declares any disposition to have been made for the purpose of evading the duty imposed by this chapter, such court may declare the property so disposed of to be liable to pay duty under the provisions of this chapter;

(g.) *Donatio Mortis Causa*.—*Gift without Change of Possession*.—Property taken as a *donatio mortis causa* made by any person, or taken under a disposition made by any person purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust or otherwise, which has not been *bona fide* made twelve months before the death of the deceased, and all property taken under any gift whenever made of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise. 1895, c. 8, s. 4.

5. (1) *Duty Payable when Property Exceeds \$25,000*.—When, after payment of all debts and expenses, the value of the property subject to duty as aforesaid exceeds twenty-five thousand dollars, and passes in manner aforesaid either in whole or in part to or for the benefit of the father, mother, husband, wife, child, grandchild, great-grandchild, daughter-in-law or son-in-law of the deceased, the same, or so much thereof as so passes, shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value.

(2) *When it Exceeds \$100,000*.—When such value exceeds one hundred thousand dollars, the whole property which passes as in the next preceding sub-section mentioned shall be subject to a duty of five dollars for every one hundred dollars of the value.

(3) *When Property Exceeds \$5,000, and Passes to Grandfather, etc.*—When the value of the property after payment as aforesaid exceeds five thousand dollars, so much thereof as passes to or for the benefit of the grandfather or grandmother or any other lineal ancestor of the deceased, except the father and mother, or to or for any brother or sister of the deceased, or to any child or grandchild of such brother or sister, or to the brother or sister of the father or mother of the deceased, or any child or grandchild of such last men-

tioned brother or sister, shall be subject to a duty of five dollars for every one hundred dollars of value.

(4) *Property Pass to Strangers*.—When the value of the property after payment as aforesaid exceeds five thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of consanguinity to the deceased than is in this section mentioned, or to or for the benefit of any stranger in blood to the deceased, save as in this chapter provided, the same shall be subject to a duty of ten dollars for every one hundred dollars of the value.

(5) *Property Less than \$500 Exempt*.—Provided that when the whole value of any property devised, bequeathed or passing to any one person by a will or intestacy does not exceed five hundred dollars, the same shall be exempt from payment of the duty imposed by this section. 1895, c. 8, s. 5; 1898, c. 8, s. 1.

6. *BEQUEST TO EXECUTOR*.—Where a bequest or devise of property, which otherwise would be liable to the payment of duty under this chapter, is made to an executor or trustee in lieu of commissions or allowance, and such bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to duty, and the judge having jurisdiction in the case shall fix such compensation. 1895, c. 8, s. 6.

7. *PROPERTY BROUGHT INTO THE PROVINCE FROM ABROAD*.—Any portion of the estate of any deceased person, whether at the time of his death such person was domiciled in Nova Scotia or elsewhere, which is brought into this province to be administered or distributed, shall be liable to the duty in this chapter imposed; but if any succession, legacy or death duty or tax has been paid on such property elsewhere than in Nova Scotia, and such duty or tax is equal to or greater than the duty payable on property in this province, no duty shall be payable thereon, and if the duty or tax so paid elsewhere is less than the duty payable on property in this province, then on the property upon which such duty or tax has been paid elsewhere, only the difference between the duty payable under this chapter, and the duty or tax so paid elsewhere shall be payable.

8. (1) *STATEMENT TO BE FILED BY EXECUTOR*.—The executor or administrator of the estate of a deceased person, shall, if such estate is liable to succession duty under the provisions of this chapter, on or before exhibiting and filing the inventory, in the court of probate, make out and file with the

registrar, for the purpose of ascertaining the succession duty, a true and correct statement under oath, showing :—

(a.) A full itemized statement of all the property of the deceased person and the market value thereof, and

(b.) The several persons to whom such property will pass under the will or intestacy, the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them. 1895, c. 8, s. 8.

(2) *Persons other than Executor Accountable for Duty.*—When property passes on the death of any person, and no executor or administrator can be made accountable for succession duty in respect thereof,

(a.) Every person to whom such property or any part thereof so passes for any beneficial interest in possession, and

(b.) Every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is vested, to the extent of the property actually received or disposed of by him, and

(c.) Every person in whom the property so passing or any part thereof is vested in possession by alienation or other derivative title, shall be accountable for the succession duty on such property, and shall within two months after the death of the deceased, or such later time as the Provincial Treasurer allows, deliver to the registrar a statement under oath to the best of his knowledge and belief of such property, the value thereof, and the person or persons to whom the same passes, and their relationship to the deceased.

4. *Provision Respecting Assignments and Transfers by Foreign Executors and Administrators.*—No foreign executor or administrator shall assign or transfer any bonds, stocks or shares of any company or corporation of any kind in this province standing in the name of a deceased person, or in trust for him, which are liable to pay succession duty, until such duty is paid to the Provincial Treasurer, and any company or corporation permitting a transfer of such bonds, stocks or shares to be entered upon the books of the company or corporation, or in any way recognizes such assignment or transfer, shall be liable to pay the duty in respect to such bonds, stocks or shares. 1 Ed. VII., c. 33, s. 4.

RE-VALUATION.

9. **RE-VALUATION BY PROVINCIAL TREASURER.**—If the Provincial Treasurer is not satisfied with the appraisement of the property of the deceased, or with the correctness of the inventory thereof, the registrar shall, at the instance of the

Provincial Treasurer, his solicitor or agent, direct in writing that a valuator appointed by the Provincial Treasurer shall investigate into the correctness of such inventory and appraisement. 1895, c. 8, s. 9.

10. (1) *MODE OF VALUATION*.—The valuator so appointed by the Provincial Treasurer shall upon being directed by the registrar forthwith,

(a.) Give notice by registered letter to the executor or administrator, and to such other persons as the registrar directs, of the time and place at which he will hold such investigation and appraise such property.

(b.) Examine such inventory and the property therein enumerated and the appraisement thereof and the correctness of the same,

(c.) Make full investigation at the time and place fixed therefor into the correctness of such inventory and valuation,

(d.) Amend, alter, add to or take away from such inventory and valuation as to him appears just and proper, and if necessary make a new inventory and appraisement,

(e.) At the conclusion of such investigation report in writing without delay to the registrar as to the value of the property and such other matters as the registrar requires.

(2) *Witnesses may be Summoned*.—For the purpose of such investigation the valuator may summon witnesses and require them to give evidence on oath or affirmation orally or in writing, and to produce such documents and things as he deems requisite for such investigation.

(3) *Compensation to Valuator*.—The valuator shall be entitled to receive the sum of five dollars per day for services performed under this section and his actual and necessary travelling expenses, and the same shall be paid to him by the Provincial Treasurer. 1895, c. 8, ss. 10, 11.

ACCOUNTANT'S CERTIFICATE.

11. (1) *STATEMENT TO BE PREPARED FOR ACCOUNTANT*.—The registrar shall, upon receiving the inventory and appraisement from the executor or administrator, unless a valuator is directed to re-value, and, in such case, upon receiving the report of the valuator, prepare a statement of facts necessary to determine the value of all estates, interests, income, annuities, life estates or term of years subject to duty under the provisions of this chapter, and shall mail the same postage prepaid and registered to an accountant, to be named by the Provincial Treasurer, and such accountant shall forthwith proceed to assess and fix the value of such interests,

income, annuities and contingent or limited estates, and shall certify the same to the registrar, and his certificate shall be conclusive as to the matters dealt with therein.

(2) *Interest*.—The rate of interest to be taken for the purpose of computing the present value of such interests, income, annuities and future contingent or limited estates shall be four per cent. 1895, c. 8, s. 12.

ASSESSMENT OF DUTY.

12. (1) *REGISTRAR TO ASSESS AND FIX DUTY*.—The registrar shall, upon receiving the accountant's certificate, proceed to ascertain and fix the duty payable under the provisions of this chapter, and shall immediately give notice thereof and of the accountant's valuation by registered letter to all persons known to be interested therein.

(2) For the purposes of this chapter, the registrar may appoint a guardian for any infant who has no guardian. 1895, c. 8, s. 13.

13. *APPEAL TO JUDGE OF PROBATE*.—Any person who is dissatisfied with:—

(a.) The valuation made under this chapter, or

(b.) The amount of duty ascertained and fixed by the registrar under the provisions of the next preceding section, may appeal therefrom to the judge of the court of probate within thirty days after the receipt of the notice by such person, on giving security, approved by the judge, to pay all costs, and upon such appeal, the judge shall have jurisdiction to determine the matter of such appeal and the costs thereof, with power to direct for the purposes of such appeal any inquiry, valuation or report to be made by any officer of the court, or other person, as he thinks fit, and the decision of the judge shall be subject to a further appeal to a judge of the Supreme Court, who shall have similar powers, and whose decision shall be final. 1895, c. 8, s. 14.

WHEN DUTY PAYABLE.

14. (1) *WHEN DUTIES PAYABLE*.—The succession duties imposed by this chapter, shall (unless otherwise herein provided for) be due and payable at the death of the deceased, or within eighteen months thereof, and if the same are paid within eighteen months no interest shall be charged or collected thereon, but if not so paid, interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased.

(2) *Rebate.*—The Provincial Treasurer is hereby authorized and empowered to allow a rebate of not more than five per cent. on the whole or any portion of any succession duties paid within six months from the date of the death of the deceased. 1895, c. 8, s. 7; 1897, c. 6, s. 2.

15. DUTY PAYABLE BY INSTALMENTS.—The duty payable in respect to an annuity shall be paid in four equal payments, the first of which payments shall be made before or on completing the payment of the first year's annuity and the three others of such payments shall be made in like manner successively before or on completing the respective payments of the three succeeding years' annuity, respectively: Provided always that if such annuity determines by the death of any person or other contingency before such payments have been completed, no further duty shall be payable in respect to such annuity. 1895, c. 8, s. 15.

16. WHEN PROPERTY BEQUEATHED TO DIFFERENT PERSONS IN SUCCESSION.—Where any property is devised, bequeathed, descended, transferred or given to or for the benefit of, or so that the same shall be enjoyed by different persons in succession:—All persons who under or in consequence of such devise, bequest, descent, transfer, or gift, are entitled for life only or to any other temporary interest, shall be chargeable with duty in respect thereto as if the annual produce thereof had been given by way of annuity, and the said duty shall be payable when such persons respectively become entitled to and begin to receive such produce, and at the times and in the instalments in the last preceding section provided as to annuities; and all and every person who becomes absolutely entitled to any such devise, bequest, descent, transfer or gift so to be enjoyed in succession, shall, when and as such person or persons respectively receive the same, or begins to enjoy the benefit thereof, be chargeable with and pay the duty for the same or such part thereof as is so received, or of which the benefit is so enjoyed, in the same manner as if the same had come to such person or persons immediately on the death of the person by whom such property has been given to be enjoyed or in such manner that the same shall be enjoyed in succession. 1895, c. 8, s. 16.

17. COMMUTATION OF DUTY.—Notwithstanding that the duty is not under the next preceding section payable until the time when the right of possession or actual enjoyment occurs, any executor, administrator, trustee or guardian, having the custody or control of the property, and any person entitled to any future estate or interest, may com-

mute for a present payment the duty which would or might but for the commutation become payable in respect to such future estate or interest, and the Provincial Treasurer may receive such present payment in full discharge of such duty; and for determining the amount of such present payment, a present value shall be set upon such duty, regard being had to the contingencies affecting the liability to and the rate and amount of such duty and interest.

ENFORCING PAYMENT OF DUTY.

18. DUTY TO BE A FIRST CHARGE.—The duty imposed by this chapter shall be a first charge on the interest of any person chargeable with said duty, and of all persons claiming in his right in all the real property in respect whereto such duty is imposed, and such duty shall also be a first charge on the interest of any person chargeable with said duty in the personal property in respect whereto the same is imposed, while the same remains in the ownership or control of such person or of any trustee, guardian or husband of such person, and such duty shall be payable by the person receiving the property in respect whereto the same is imposed. 1895, c. 8, s. 17.

19. (1) PERSONS WHO ARE PERSONALLY ACCOUNTABLE.—The following persons, in addition to the person receiving the property subject to duty, shall be personally accountable to the Provincial Treasurer for the duty payable in respect to such property, but to the extent only of the property or funds actually received or disposed of by them respectively, that is to say, every executor, administrator, trustee, guardian or husband, in whom respectively any property, or the management of any property, subject to such duty, is vested.

(2) Every such executor, administrator, trustee, guardian or husband shall retain out of the property subject to any such duty the amount thereof, or collect the duty thereon, and shall not deliver any property subject to duty until such duty has been paid. 1895, c. 8, s. 18.

20. EXECUTOR'S POWER TO SELL TO PAY DUTY.—Executors, administrators and trustees shall have power to sell so much of the property subject to duty as will enable them to pay such duty in the same manner as they are enabled by law to sell for the payment of debts of the testator or intestate, or in cases of a trustee, as if the instrument creating the trust contained a power of sale for the satisfaction of such duty. 1895, c. 8, s. 19.

21. DUTY PAYABLE TO TREASURER.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be forthwith paid by him to the Provincial Treasurer. 1895, c. 8, s. 20.

22. REFUND.—When any debts are proved against the estate of a deceased person, after the payment of legacies or distribution of the property from which the duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next-of-kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Provincial Treasurer, or by the Treasurer if it has been so paid. 1895, c. 8, s. 21.

23. JUDGE OF PROBATE MAY ORDER PAYMENT.—If it appears to the judge of the court of probate on the application of any person interested that any duty payable under this chapter has not been paid according to law, such judge shall cite the person or persons interested in the property liable to the duty to appear on a day certain, to be named, and show cause why such duty should not be paid. Such citation shall be served personally or by registered letter ten clear days before the day named in such citation. The judge, upon being satisfied that such citation has been duly served, may hear and determine all questions respecting such duty and the person or persons liable therefor, and may make an order directing the person or persons liable to pay the same to make payment thereof to the Provincial Treasurer forthwith, or within such reasonable time as appears proper to the judge. Such order may be enforced by execution in the same manner, as nearly as possible, as a decree for the payment of posts under "The Probate Act." 1895, c. 8, s. 22.

Where there is no judge of the court of probate residing in a county, such application may be made to the registrar of such court, and the registrar shall, upon such application, have and exercise all the powers as to the hearing of such applications and as to making orders therein which are hereinbefore conferred upon the judge of the court of probate. 1 Ed. VII., c. 33, s. 1.

24. PROBATE ACT TO APPLY TO OFFICIALS.—The provisions of "The Probate Act" in respect to appeals to the Supreme Court shall be applicable to any order made by the judge of the Court of Probate, or the registrar thereof, under the next preceding section. 1895, c. 8, s. 23; 1 Ed. VII., c. 33, s. 2.

25. COSTS.—The costs of all proceedings under the next two preceding sections shall be in the discretion of the court or judge or registrar, and shall be according to the scale of fees in the court of probate, except the costs of appeals to the Supreme Court, which shall be according to the scale of Supreme Court fees. 1895, c. 8, s. 24; 1 Ed. VII., c. 33, s. 3.

26. REGISTRAR TO GIVE BONDS.—Every registrar, before entering on the duties of his office, shall deliver to the Provincial Treasurer, a bond or other security or securities, in such sum and with such sufficient security or securities as are approved of by the Governor-in-Council, for the due and punctual performance of the duties imposed upon such registrar by this chapter, and that he will not receive any duty payable under this chapter. 1895, c. 8, s. 27.

27. QUARTERLY RETURNS BY REGISTRAR.—The registrar shall make quarterly returns to the treasurer, showing the following facts:—

(a.) The name and address of every executor and administrator to whom probate or letters of administration have been granted, the date of granting the same, and the name of the deceased person to whose estate the same relate;

(b.) The date of the filing of every inventory, together with the amount of the appraised value of the property therein;

(c.) A copy of every statement filed with him under the provisions of this chapter;

(d.) Every valuation and appraisement by any valuator appointed by the Provincial Treasurer;

(e.) A statement of every assessment by the registrar of the duty payable upon the cash value of property liable to duty;

(f.) A statement showing what appeals have been taken under the provisions of this chapter, and what appeals have been decided, with the results of the same. 1895, c. 8, s. 25.

28. PAYMENT OF REGISTRAR.—The registrar shall be paid for such returns such fees as is fixed by the Governor-in-Council. 1895, c. 8, s. 26.

29. FEES OF JUDGES AND REGISTRARS OF PROBATE.—The judges of probate and the registrars of the several courts of probate shall be entitled to take for the performance of duties and services under this chapter, similar fees to those payable to them under the chapter "Of Costs and Fees:" 1895, c. 8, s. 28.

30. REGULATIONS TO BE MADE BY GOVERNOR-IN-COUNCIL.—The Governor-in-Council may make regulations for carrying into effect the provisions of this chapter, and such regulations shall be laid before the House of Assembly forthwith, if the house is in session at the date of such regulations and if the house is not in session such regulations shall be laid before the house within the first seven days of the session next after such regulations are made. R. S., c. 8, s. 29.

AMENDMENT TO THE SUCCESSION DUTIES ACT.

1 Ed. VII., cap. 32, N.S.

Be it enacted by the Governor, Council and Assembly, as follows :—

1. GOVERNOR-IN-COUNCIL AUTHORIZED TO REFUND CERTAIN MONEYS HERETOFORE RECEIVED.—The Governor-in-Council is hereby authorized to refund any moneys at any time heretofore paid into the Provincial Treasury under any Act respecting Succession duties upon any bequest or devise of money or other property for religious, charitable or educational purposes.

2. MONEYS REFUNDED, HOW VOTED AND PAID.—The moneys so refunded shall be voted by the legislature and paid out of the current revenues of the Province, and shall be paid to the institutions to which the said bequests or devises were respectively made.

PRINCE EDWARD ISLAND

P. E. I. SUCCESSION DUTY ACT, 1894.

57 Vict., chap. 5.

AN ACT TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

[Assented to May 9th, 1894.]

Preamble.—Whereas, the Province of Prince Edward Island expends large sums annually for the care of the insane and the poor, and it is expedient to provide a fund for defraying part of such expenditure by a succession tax on certain estates of persons dying as hereinafter mentioned :

Therefore, be it enacted by the Lieutenant-Governor and Legislative Assembly as follows :

1. **Short Title.**—This Act may be cited as “The Succession Duty Act, 1894.”

2. "Property"—meaning of.—The word "property" in this Act includes real and personal property of every kind and description, and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives.

3. "Executor" and "Administrator"—meaning of.—"Executor" shall mean and include "executrix," and "Administrator" shall mean and include administratrix."

4. Where Act shall not apply.—This Act shall not apply :—

(1). To any estate the value of which, after payment of all debts and expenses of administration, does not exceed three thousand dollars; nor

(2). To property given, devised, or bequeathed for religious, charitable or educational purposes within this Province; nor

(3). To property passing under a will, intestacy or otherwise to or for the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, where the value of the property of the deceased, after payment of all debts and expenses of administration, does not exceed ten thousand dollars in value.

5. Property passing on death of owner liable to Succession duty.—Save as aforesaid all property situate or being within this Province, whether the deceased person owning or entitled thereto last dwelt within said Province or not, passing either by will or intestacy, and any interest therein or income therefrom which shall be voluntarily transferred by deed, grant or gift, made in contemplation of the death of the grantor or bargainor, or made or intended to take effect, in possession or enjoyment after such death to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy, to any property or the income thereof, and all property wherever situate or being, over which the executor or administrator shall or may exercise control and which shall or may come into his possession, shall be subject to a succession duty to be paid for the use of the Province over and above all Probate and Surrogate fees.

(1). WHERE RATE OF DUTY SHALL BE $1\frac{1}{2}$ PER CENT.—Where the value of the property of the deceased, after payments of all debts and expenses aforesaid, exceeds ten thousand dollars, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, grandchild, brother, sister, brother's child, or sister's child, daughter-in-law or son-in-law of the deceased, the same or so much thereof as so passes (as the case may be) shall be subject to a duty of one dollar and fifty cents for every one hundred dollars of the value; or,

(2). WHERE RATE SHALL BE $2\frac{1}{2}$ PER CENT.—Where the value of the property, after payment as aforesaid, exceeds fifty thousand dollars, the whole property which passes as aforesaid shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value; and

(3). WHERE RATE SHALL BE $2\frac{1}{2}$ PER CENT.—Where the value of the property, after payment as aforesaid, exceeds three thousand dollars, so much thereof as passes to or for the benefit of the grandfather, grandmother, or any other lineal ancestor of the deceased, except the father and mother, or to a brother or sister of the father or mother of the deceased, or any descendant of such last mentioned

brother or sister, shall be subject to a duty of two dollars and fifty cents for every one hundred dollars of the value.

(4). WHERE RATE SHALL BE $7\frac{1}{2}$ PER CENT.—Where the value of the property of the deceased, after payments as aforesaid, exceeds three thousand dollars, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as hereinbefore provided for, the same shall be subject to a duty of seven dollars and fifty cents for every one hundred dollars of the value.

6. Executors, etc., to file Inventory. Bond for payment of duty.—An Executor or Administrator applying for Letters of Probate or Letters of Administration to the estate of a deceased person shall, before the issue of Letters of Probate or Administration to him, make and file with the Surrogate or Judge of Probate a full, true and correct statement under oath showing (a) A full, itemized Inventory of all the property of the deceased person and the market value thereof, (b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased, and the age, address and occupation of each of them so far as then can be ascertained. And the Executor, or Administrator, shall, before the issue of Letters of Probate or Letters of Administration, deliver to the Surrogate or Judge of Probate a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person liable to succession duty, executed by himself and two sureties (each of whom shall justify on oath) to be approved by the Surrogate or Judge of Probate, conditioned for the due payment to His Majesty of any duty to which the property coming into the hands of such Executor or Administrator of the deceased may be found liable. Such bond shall be in the form Schedule A to this Act.

7. Attorney General may obtain Letters of Administration, etc., when no application is made for same within thirty days after death of owner of estate. Proviso.—If hereafter any person shall die whose estate or any part thereof is liable to succession duty under this Act, and Letters of Administration or Probate be not applied for and actually granted, within thirty days of the death of such person, it shall be lawful for the Attorney General to apply for and obtain Administration or Probate as the case may be, without giving any security, either in his own name or of that of any other person to be appointed by him, and when he does so the estate shall thereafter be administered under the direction of the Court of Chancery. Provided always that any person having such an interest in the estate as would entitle him to Letters of Administration or Probate may at any time upon application to the Court of Chancery, by petition or summons, and giving security for the due payment of all succession duty payable in respect of such estate to the satisfaction of the said Court, assume the administration of the said estate.

8. When appraisement to be directed.—In case the Provincial Secretary and Treasurer of the Province of Prince Edward Island is not satisfied with the value of the property of the deceased, so sworn to, the Surrogate or Judge of Probate shall, at the instance of the Provincial Secretary and Treasurer, his solicitor or agent, direct in writing that an appraiser appointed by the Lieutenant Governor in Council of the Province shall make a valuation and appraise the said property under oath.

9. Valuation of Property.—In such case the appraiser shall forthwith give due and sufficient notice by delivery thereof or by registered letter to the executor or administrator, and to such other persons as the Surrogate or Judge of Probate may direct, of the time and place at which he will appraise such property, and he shall appraise the same accordingly at its fair market value, and make a report in writing thereof to the Surrogate or Judge of Probate, together with such other facts in relation thereto as the Surrogate or Judge of Probate may require, and such report shall be filed in the office of the Surrogate or Judge of Probate. The appraiser shall be entitled to receive, for services performed under this Act, such remuneration as the Lieutenant-Governor in Council may decide, not exceeding Five Dollars per day.

10. Where Provincial Secretary is not satisfied with value of property, appraiser may be appointed by Lieutenant Governor.—Powers of appraiser.—The Lieutenant-Governor in Council of the Province may, in case in which the Provincial Secretary is not satisfied with the value of the property of the deceased, as aforesaid, appoint an appraiser, whose duty it shall be to examine such Inventory and the property therein enumerated, and the appraisement thereof, and the correctness of the same. He shall have power to summon before him witnesses, and to require them to give evidence on oath orally or in writing (or on solemn declaration if they be parties entitled to affirm in civil matters), and to produce such documents and things as he may deem requisite to the full investigation of the matter of the correctness of said inventory and appraisement. For the purpose of such investigation he shall have all the powers that an executor or administrator has heretofore had when making an inventory. He shall alter, amend, add to or take away from the said inventory and appraisement as to him shall appear just and proper, and shall, if necessary, make a new inventory and appraisement. He shall as soon as possible conclude such investigation, and make his report thereon without delay.

11. Mode of assessing property liable to duty.—The Surrogate or Judge shall upon receiving the inventory and appraisement from the executor or administrator unless the appraiser is directed to value and appraise, and in such case upon receiving the report of the appraiser, forthwith proceed to assess and fix the then cash value of all estates, interests, annuities and life estates or terms of years growing out of such estate, and the duty to which the same is liable, and shall immediately give notice thereof by service of a copy of such notice or by registered letter, to all parties known to be interested therein; and the value of every future or contingent or limited estate, income or interest shall, for the purpose of this Act, be determined by the rule, method and standard of mortality and of value to be fixed by an accountant named by the Provincial Secretary and Treasurer of the Province, and the accountant shall, on the application of a Surrogate or Judge of Probate, determine the value of such future or contingent or limited estate, income or interest upon the facts contained in the statement of the Surrogate or Judge of Probate hereinafter provided for, and shall certify the same to the Surrogate or Judge of Probate, and his certificate shall be conclusive as to the matters dealt with therein.

12. Appeals from appraisement or assessment.—Any person affected thereby who is dissatisfied with the appraisement or with the assessment of the Surrogate or Judge of Probate provided for in

the last above section hereof may appeal therefrom to the Supreme Court of Prince Edward Island within thirty days after the registration of the notice to such person on giving security approved by a Judge of the Supreme Court to pay all costs, together with whatever duty shall be fixed by the said Court, and upon such appeal to the Supreme Court the Court shall have jurisdiction to determine all questions of valuation and of the liabilities of the appraised estate or any part thereof for such duty, and such decision shall be final.

13. Bond of Executor to be delivered to Provincial Secretary.—The Surrogate or Judge of Probate shall require every executor or administrator as soon as the value of the property liable to succession duty has been ascertained, as hereinbefore provided, to deliver to him such bond as is provided for in section 6 of this Act, and shall forthwith upon receipt of such bond deliver the same to the Provincial Secretary and Treasurer of the Province at Charlottetown.

14. Surrogate to prepare statement of facts necessary to determine value of estate.—The Surrogate or Judge of Probate shall in every case where he is required to assess and fix the cash value of future or contingent or limited estates, income or interest, prepare a statement of facts necessary to determine the value of such estate, income or interest, and deliver or mail a copy thereof, postage prepaid and registered, to the accountant named by the Provincial Secretary and Treasurer. He shall, upon request of such accountant, furnish him in the same way with such additional facts as may be necessary for such determination.

15. Surrogate to make monthly returns to Provincial Secretary of particulars of estate under administration, etc.—The Surrogate or Judge of Probate shall make monthly returns to the Provincial Secretary and Treasurer showing the following facts :—

(1). The name and address of every executor or administrator to whom letters testamentary or letters of administration have been granted, the date of granting the same, and the name of the deceased person to whose estate the same relate.

(2). The date of filing every inventory, together with the amount of the appraised value of the property therein.

(3). A copy of every statement filed under section 6 of this Act.

(4). Every valuation and appraisal by the appraiser appointed by the Lieutenant-Governor in Council.

(5). A statement of every assessment by the Surrogate or Judge of Probate of the cash value of property liable to duty, showing the duty payable in respect of the same.

(6). A statement showing what appeals have been taken under section 12 of this Act, and what appeals have been decided, with the results of the same.

16. Bequests, etc., to executors or trustees.—Where a bequest or devise of property which otherwise would be liable to the payment of duty under this Act is made to an executor or trustee in lieu of commissions or allowance, and said bequest or devise exceeds what would be a reasonable compensation for the services of the executor or trustee, such excess only shall be liable to said duty, and the Judge having jurisdiction in the case shall fix such compensation.

17. When duty payable on future estates or interests.—In all cases where there has been a devise, descent or bequest of property liable to succession duty, to take effect in possession, or to come into actual enjoyment after the expiration of one or more life

estate or estates for a period of years, the duty on such future estate or interest shall not be payable nor interest begin to run thereon until the person or persons taking such future estate or interest shall come into actual possession of such estate or interest by the determination of estates for life or years, and the duty shall be assessed upon the value of the estate or interest at the time the right of possession accrues as aforesaid, and the person or persons so taking shall upon coming into actual possession become liable to pay such duty.

18. Duties payable within eighteen months from death of owner.—The duties imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the deceased or within eighteen months thereafter, and if the same are paid within eighteen months no interest will be charged or collected thereon, but if not so paid interest at the rate of six per centum per annum shall be charged and collected from the death of the deceased, and such duties, together with the interest thereon, shall be and remain a lien upon the property in respect to which they are payable until the same are paid.

19. Extension of time for payment of duty.—The Judge of Probate having jurisdiction in the case may make an order, upon the application of any person liable for the payment of said duty, extending the time fixed by law for payment thereof where it appears to such Judge that payment within the time prescribed by this Act is impossible owing to some cause over which the person liable has no control, provided, however, that such time shall in no case be extended for a greater period than one year beyond the time so fixed.

20. Administrators, etc., to deduct duty before delivering property.—Any administrator, executor or trustee, having in charge or trust any estate, legacy or property subject to the said duty, shall deduct the duty therefrom, or collect the duty thereon, upon the appraised value thereof from the person entitled to such property, and he shall not deliver any property subject to duty to any person until he has collected the duty thereon.

21. Power to sell for payment of duty.—Executors, administrators and trustees shall have power to sell so much of the property of the deceased as will enable them to pay said duty in the same manner as they may be enabled by law so to do for the payment of debts of the testator or intestate.

22. To whom duty to be paid.—Every sum of money retained by an executor, administrator or trustee, or paid into his hands for the duty on any property, shall be paid by him forthwith to the Provincial Secretary and Treasurer of the Province, or as he may appoint.

23. Refunding duty upon subsequent payment of debts.—Where any debts are proven against the estate of a deceased person, after the payment of legacies or distribution of the property from which the said duty has been deducted, or upon which it has been paid, and a refund has been made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee, if the said duty has not been paid to the Provincial Secretary or Treasurer of the Province, or by the Provincial Secretary and Treasurer if it has been so paid.

24. Collection of duty upon subsequent payment of debts.—Where any foreign executor, administrator or trustee assigns or

transfers any stocks, bonds or debentures of any company or corporation in this Province, standing in the name of a deceased person, or in trust for a deceased person, which are liable to the said duty, the said duty, if not previously paid, shall be paid to the Provincial Secretary and Treasurer of the Province on the transfer thereof, otherwise the company or corporation permitting such transfer shall become liable to pay such duty, provided that such company or corporation had notice before such transfer that the said stocks, bonds or debentures were liable to the said duty.

25. Mode of enforcing payment of duty.—If it appears to the Judge of Probate that any duty accruing under this Act has not been paid according to law, he shall make an order directing the person or persons interested in the property liable to the duty to appear before him on a day certain to be therein named, and show cause why said duty should not be paid. Such order shall be served either personally or by registered letter ten clear days before the day named in said order. Upon said day the Judge, upon being satisfied that such order has been duly served, may hear and determine all questions regarding said duty, and the person or persons liable therefor, and may make an order directing the person or persons liable to pay the same to make payment thereof to the Provincial Secretary and Treasurer forthwith, or within such reasonable time as may appear proper to the Judge. Such order shall be considered as a judgment of a Court of Record, and may be enforced by execution in the form Schedule B. hereto annexed.

26. Additional remedies for collection of duty.—In addition to or in lieu of the remedy hereinbefore provided, if it shall at any time appear to the Attorney General that the duty payable in respect of any estate or any part thereof under the provisions of this Act has not actually been paid within the time allowed by the Statute he may:

(1). Proceed in the Court of Chancery to enforce the lien therein before created; or,

(2). He may in the Court of Chancery or the Supreme Court proceed by suit to be begun by ordinary Writ of Summons or Capias to enforce the bond which may have been given as provided by this Act; or,

(3). He may in the same suit, notwithstanding that different parties may be required, proceed to enforce the lien and the bond.

27. Costs.—The costs of all proceedings under this Act shall be in discretion of the Court or Judge.

28. Fees of Surrogate.—The Surrogate or Judge of the Court of Probate shall be entitled to take for the performance of duties and services under this Act similar fees to those payable under the Statute in force relating to Probate Courts.

29. Lieutenant-Governor in Council may make regulations.—The Lieutenant Governor in Council may make regulations for carrying into effect the provisions of this Act, and such regulations shall be laid before the Legislative Assembly forthwith, if the Legislature is in session at the date of such regulations and if the Legislature is not in session such regulations shall be laid before the Legislature within the first seven days of the session next after such regulations are made.

SCHEDULE A.

Know all men by these presents that we, A. B. (*the administrator or executor*), C. D. and E. F., all of———, in the County of———, Province of Prince Edward Island, are held and firmly bound unto our Sovereign Lord the King in the sum of———dollars (*ten per centum of the value ascertained under this Act, the property liable to succession duty*), to be paid to His Majesty the King, for which payment well and truly to be made we bind ourselves, our and every of our heirs, executors and administrators jointly and severally by these presents, sealed with our seals and dated this———day of———A.D., 19———

The condition of this obligation is such that if the above bounden A. B. Administrator (*or executor as the case may be*), of———, deceased, shall make due payment to the Provincial Secretary and Treasurer of the Province of Prince Edward Island of all and any duty to which the property of the said———, deceased, coming to the hands of the said A. B. may be found liable, then this obligation to be null and void, otherwise to remain in full force and effect.

Signed, sealed and delivered
in presence of

[L. S.]
[L. S.]
[L. S.]

SCHEDULE B.

EXECUTION.

DOMINION OF CANADA,

Province of Prince Edward Island.

In the Surrogate and Probate Court.

County of———

To the Sheriff of the County of———County

GREETING :

You are hereby required (or in case it may be an alias execution, as before) to levy of the goods and chattels of———, within your bailiwick, the sum of———for cost awarded in favor of (or as the case may be) in a certain proceeding lately had before me as Surrogate Judge of Probate, in and for Prince Edward Island; and have that money before me at my office, in Charlottetown, in said Island, within thirty days from the date hereof, to be rendered to the said———, and for want of such goods and chattels whereon to levy you will take the body of the said———, and him safely keep until the said sum and your costs of levying this execution be paid and make return thereof within thirty days from the date thereof.

Given under my hand this———day of———19———

C. D.

Surrogate, Judge of Probate.

E. F.

Registrar.

NORTH WEST TERRITORIES.

ORDINANCES OF THE N. W. T. 1903.

Sess. 2, chap. 5.

Applicable to Alberta. (As to Saskatchewan see p. 183.)

AN ORDINANCE TO PROVIDE FOR THE PAYMENT OF SUCCESSION DUTIES IN CERTAIN CASES.

[Assented to November 21, 1903.]

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

1. **Short title.**—This Ordinance may be cited as "*The Succession Duty Ordinance*." 1903, Sess. 2, c. 5, s. 1.

2. **Application.**—This Ordinance shall apply to the estates of persons dying after it comes into effect. 1903, Sess. 2, c. 5, s. 2.

3. **Interpretation.**—In this Ordinance and any regulations passed thereunder unless the context otherwise requires:

1. **Property.**—The word "property" includes real and personal property of every description and wheresoever situate and every estate or interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representatives;

2. **Aggregate value.**—The expression "aggregate value" means the value of the property before any debts or other allowances or exemptions are deducted therefrom and for the purposes of subsections (3), (4) and (5) of section 5 includes property outside of the Territories;

3. **Dutiable value.**—The expression "dutiable value" means the value of the property after the debts or other allowances or exemptions authorised by this Ordinance are deducted and in determining the dutiable value of the estate of a deceased the value shall be taken as at the date of the death of the deceased and allowance shall be made for reasonable funeral expenses and for debts and incumbrances which shall be deducted from the value of the property but no allowance shall be made:

(a) For debts incurred by the deceased or incumbrances created by a disposition made by the deceased unless such debts or incumbrances were incurred or created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest; or

(b) For any debt in respect whereof there is a right to reimbursement from any other estate or person unless such reimbursement cannot be obtained; or

(c) More than once for the same debt or incumbrance charged upon different portions of the estate; or

(d) For the expenses of administration except the expenses of procuring letters probate or letters of administration; or

(e) For the expenses of the execution of any trust created by the will of a testator.

4. **Court.**—"Court" shall mean the supreme court of the North-West Territories;

5. **Judge.**—"Judge" shall mean a judge of the said court. 1903, Sess. 2, c. 5, s. 3.

4. **To what Ordinance does not apply.**—This Ordinance shall not apply as respects the payment of duty:

1. To any estate the value of which after the allowance authorised by this Ordinance does not exceed five thousand dollars; nor

2. To any estate in respect of property passing by will or intestacy or otherwise to or for the use of the father, mother, brother, sister, husband, wife, child, grandchild, daughter-in-law or son-in-law of the deceased or to any person or persons adopted before the age of twelve years by the deceased as his child or children or to any person to whom deceased for not less than ten years prior to his death stood in the acknowledged relation of parent where the aggregate value of the property of the deceased does not exceed twenty-five thousand dollars. 1903, Sess. 2, c. 5, s. 4.

5. **Property in respect of which estate liable to succession duty.**—Save as aforesaid the estate of any person dying after the coming into force of this Ordinance who at the time of his death was domiciled in the Territories or who being domiciled elsewhere died leaving property in the Territories shall be subject to a succession duty to be paid for the use of the Territories and for the purpose of ascertaining amount of such duty the classes of property hereinafter enumerated shall be deemed to be part of the estate of the deceased:

(a) **Property in or out of the Territories.**—All property situate within the Territories and any interest therein or income therefrom whether the deceased person owning or being entitled to such property was at the time of his death domiciled in the Territories or elsewhere and where the deceased at the time of his death was domiciled in the Territories all movable or personal property locally situate without the Territories and any interest therein;

(b) **Property voluntarily transferred in contemplation of death.**—All property situate as aforesaid or any interest therein or income therefrom which shall be voluntarily transferred by transfer made in contemplation of the death of the transferor or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise or by reason of which transfer any person shall become beneficially entitled in possession or expectancy to any property or the income thereof;

(c) **"Donationes mortis causa" or voluntary dispositions within twelve months of death.**—Any property taken as *donatio mortis causa* or under a disposition purporting to operate as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bona fide* made twelve months before the death of deceased including property taken under any gift, whenever made, of which property *bona fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift and thenceforward retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise;

(d) **Property transferred by owner to himself jointly with some other person.**—Any property which a person having been absolutely entitled thereto has caused or may cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in

some part thereof passes or accrues by survivorship on his death to such other person including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone or in concert or by arrangement with any other person;

(e) **Property passing under settlement.**—Any property passing under any past or future settlement including any trust whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting a settlement whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person made by deed or other instrument not taking effect as a will whereby an interest in such property or the proceeds of sale thereof for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of sale thereof or to otherwise resettle the same or any part thereof;

(f) **Annuities, etc.**—Any annuity or other interest purchased or provided either by any person alone or in concert or by arrangement with any other person to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased;

(g) **Property of which deceased was competent to dispose liable to duty.**—Any property of which a person was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general or limited power as would if he were *sui juris* enable him to dispose of the property as he thinks fit or to dispose of the same for the benefit of his children or some of them, whether the power is exercisable by instrument *inter vivos* or by will or both including the power exercisable by a tenant in tail whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

(2) **Particular descriptions not to affect general words.**—The descriptions of properties in clauses (c), (d), (e), (f) and (g) shall not be construed to restrict the generality of the descriptions contained in clauses (a) and (b).

(3) **Amount of duty.**—Where the aggregate value of the property of the deceased exceeds \$25,000 so much thereof as passes by will, intestacy or otherwise to or for the benefit of any one or more of the persons enumerated in clause 2 of section 4 shall be subject to a duty as follows:—

Upon the value up to \$100,000 at the rate of \$1.50 for every \$100 of value of the whole property in excess of \$25,000;

Where the value exceeds \$100,000 but does not exceed \$200,000 at the rate of \$2.50 for every \$100 of value of the whole property in excess of \$25,000;

Where the value exceeds \$200,000 at the rate of \$5.00 for every \$100 of value of the whole property in excess of \$25,000.

(4) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes by will, intestacy or other-

wise to the grandfather or grandmother or any other lineal ancestor of the deceased except the father or mother or to any descendant of a brother or sister of the deceased or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister shall be subject to a duty of \$5 for every \$100 of the value in excess of \$5,000.

(5) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described or to or for the benefit of any stranger in blood to the deceased save as hereinbefore provided for shall be subject to a duty of \$10 for every \$100 of the value in excess of \$5,000.

(6) No duty shall however be imposed on any estate in respect of any property which, being all of the property passing to one person, when such person is one of the persons enumerated in clause 2 of section 4, does not exceed \$5,000 and in any other case does not exceed \$200.

(7) If any legacy or succession duty has been paid on any movable or personal property locally situate without the Territories elsewhere than in the Territories no further duty in respect of it shall be imposed beyond the amount, if any, for which the estate would be liable in respect of such property in excess of the amount so paid.

(8) Nothing herein contained shall render any estate liable for duty in respect of any property *bona fide* transferred for a consideration that is of a value substantially equivalent to the property transferred. 1903, Sess. 2, c. 5, s. 5.

6. Executors, etc., to file inventory and bonds.—An executor or administrator applying for letters probate or for letters of administration to the estate of a deceased person shall before the issue of letters probate or administration to him make and file with the clerk of the court a full, true and correct statement in duplicate, under oath, showing:

(a) A full itemised inventory of all the property of the deceased person including any property not situate in the Territories and the market value thereof; and

(b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator shall before the issue of letters probate or letters of administration deliver to the clerk a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person in respect to which his estate may be liable or may become liable to succession duty executed by himself and two sureties to be approved by the clerk or a guarantee company to be approved by the Territorial treasurer conditioned for the due payment to his Majesty of any duty to which the estate of the deceased coming into the hands of the said executor or administrator may be found liable.

(2) The foregoing subsection shall not apply to estates of which the aggregate value does not exceed \$5,000 nor as respects the provisions requiring security to estates in respect of which no succession duty is payable or administration to which is being applied for by a public administrator.

(3) One duplicate of the said statement shall be forthwith transmitted by the clerk of the court to the Territorial treasurer.

(4) Where property passes on the death of the deceased and no executor or administrator can be made accountable for succession

duty in respect of such property every person to whom any property so passes for any beneficial interest in possession and also to the extent of the property actually received or disposed of by him every trustee, guardian, committee or other person in whom any interest in the property so passing or the management thereof is at any time vested and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the succession duty in respect of such property and shall within two months after the death of the deceased or such later time as the Territorial treasurer shall allow deliver to the clerk of the court of the judicial district in which said property is situate an account to the best of his knowledge and belief of the property which account shall be verified under oath.

(5) Any executor or administrator who in order to escape payment of succession duty imposed by this Ordinance shall fail to include any property of the deceased in the inventory required by this section to be filed or shall distribute any part of the said estate without bringing the same into the Territories shall be personally liable to pay to His Majesty the amount of the duty which would have been payable in respect of the property so omitted or so distributed. 1903, Sess. 2, c. 5, s. 6.

7. Appraisement of appraiser.—In case the Territorial treasurer is not satisfied with the value so sworn thereto or to the correctness of the said inventory he may personally or by his advocate or agent direct in writing some competent person to make a valuation and appraise the said property and also to appraise any property alleged to have been improperly omitted from the said inventory. 1903, Sess. 2, c. 5, s. 7.

8. Valuation by appraiser.—Any appraiser appointed under the provisions of the next preceding section shall forthwith give due and sufficient written notice to the executors or administrators and to such other persons as the clerk of the court may direct of the time and place at which he will appraise the property included in the inventory or any property which in the opinion of the Territorial treasurer his advocate or agent should be included therein and shall appraise the same accordingly at its fair market value and make a written report in duplicate of the appraisement together with such other facts in relation thereto as the clerk of the court may by order require and such report shall forthwith be filed in the office of the clerk of the court and for the purpose of the said inquiry and appraisement the said appraiser shall have all the powers which may be conferred upon commissioners under *An Ordinance respecting Inquiries concerning Public Matters*, being chapter 12 of *The Consolidated Ordinances 1898*.

(2) The appraiser shall be entitled to receive the sum of \$5 per day for services performed under this Ordinance and his actual and necessary travelling expenses and the same shall be paid to him by the Territorial treasurer.

(3) One duplicate of the said report shall be forthwith transmitted by the clerk of the court to the Territorial treasurer. 1903, Sess. 2, c. 5, s. 8.

9. Mode of assessing property liable to duty.—If the Territorial treasurer, his advocate or agent and the other parties interested do not agree thereon the clerk of the court of the judicial district in which the property or part of it is situate shall assess and fix the cash value at the date of the death of the deceased of all estates, in-

terests, annuities and life estates or terms of years growing out of his estate and the duty to which such estate is liable and shall immediately file his assessment in his office and give notice thereof by registered letter to the Territorial treasurer and to the executor or administrator and other parties interested. 1903, Sess. 2, c. 5, s. 9.

10. Appeal from appraisement or assessment.—Any interested person dissatisfied with the appraisement or assessment may appeal therefrom to a judge within thirty days after the making and filing of such assessment and upon such appeal the said judge shall have jurisdiction to determine all questions of valuation and the liability of the appraised estate or any part thereof for such duty and the decision of the said judge shall be final. 1903, Sess. 2, c. 5, s. 10.

11. Recovery of duties by action.—Any sum payable under this Ordinance shall be recoverable with costs of suit as a duty due to his Majesty from any person liable therefor by action in the supreme court of the North-West Territories in any judicial district and it shall not in any case be necessary to take the proceedings authorised by the preceding sections. 1903, Sess. 2, c. 5, s. 11.

12. Matters determinable by court.—The said court shall also have jurisdiction to determine what property is liable to duty under this Ordinance, the amount thereof and the time or times when the same is payable and may itself or through any referee exercise any of the powers which by sections 7 to 10 are conferred upon any officer or person. 1903, Sess. 2, c. 5, s. 12.

13. Action before time for payment of duty.—An action may be brought to determine any question of liability under this Ordinance notwithstanding that the time for the payment of the duty has not arrived and such action shall be considered as an ordinary action in the said court. 1903, Sess. 2, c. 5, s. 13.

14. Appeals.—An appeal shall lie to the supreme court *en banc* in any action brought under any of the foregoing sections wherever an appeal would lie if the action were between subject and subject. 1903, Sess. 2, c. 5, s. 14.

15. Declaration as to liability of property transferred before death.—Where any person's estate is declared liable to duty in respect of any property which has previous to the death of such person been conveyed or transferred to some other person the court may declare the duty to be a lien upon such property and may make such declaration although the amount of such duty has not been ascertained and where any property in respect of which the estate would have been liable to duty had such property remained in the hands of the person to whom or for whose benefit it was conveyed or transferred by such deceased person has been conveyed or transferred to any purchaser for valuable consideration the court may direct the person to whom or for whose benefit the said property was conveyed or transferred by such deceased person as aforesaid to pay the amount of the duty to which the estate would have been subject in respect of such property. 1903, Sess. 2, c. 5, s. 15.

16. Future estate, etc., when duty may be paid.—Where the property real or personal in respect of which duty is payable includes any future or contingent estate, income or interest the duty in respect of such estate, income or interest may be paid within the time limited by subsection (1) of section 17, and where so paid the duty shall be on the value of such estate, income or interest as at the death of the deceased. By consent of the Territorial treasurer in writing duty may be paid after the time so limited and before such

estate, income or interest comes into possession; but in the event of such consent the duty shall then be on a value not less in any event than the value of such estate, income or interest as at the date when the duty is paid; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest. The duty in respect of any future or contingent estate, income or interest if not sooner paid shall be payable forthwith when such estate, income or interest comes into possession in which case the duty shall be on the value computed under section 9 as at the date of such coming into possession; and no deduction shall be made for duty paid or payable in respect of any prior estate, income or interest.

(2) **Duty paid before estate comes into possession.**—Where the duty in respect of any future or contingent estate, income or interest has been paid by the executor, administrator or trustee before such estate, income or interest comes into possession the duty so paid shall be charged on such future or contingent estate, income or interest and shall be repaid with interest at the rate of five per cent. per annum to the executor, administrator or trustee, as the case may be, by the person who is to become entitled to such future or contingent estate, income or interest and if not sooner repaid shall then be repaid at the time when such estate, income or interest comes into possession.

(3) **When no person is entitled to the present enjoyment of a future or contingent estate.**—Where in respect of any future or contingent estate or interest there is no person beneficially entitled to the present income or enjoyment or where there is some part thereof to which there is no person so entitled the duty in respect of such future or contingent estate or interest, or part thereof, as the case may be, shall be payable as in sections 16 and 17 provided.

(4) **Commuting duties on future estate or interests.**—Notwithstanding the duty may under this section not be payable until the time when the right of possession or actual enjoyment accrues any executor, administrator, guardian or trustee or person owning a prior interest when such executor, administrator, guardian or trustee or person has the custody or control of the property may agree upon or commute for a present payment out of the property in discharge of the said duty; and the treasurer of the Territories may upon the application of any such person commute the succession duty which would or might but for the commutation become payable in respect of such interest for a certain sum to be presently paid and for determining that sum shall cause a present value to be set upon such duty regard being had to the contingencies affecting the liability to and rate and amount of such duty and interest and on the receipt of such sum the treasurer shall give a certificate of discharge from such duty. 1903, Sess. 2, c. 5, s. 16.

17. Duties to be payable within eighteen months from the death of the owner.—The duties imposed by this Ordinance unless otherwise herein provided shall be due and payable at the death of the deceased or within eighteen months thereafter and if the same are paid within eighteen months no interest shall be charged or collected thereon but if not so paid interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected and such duties together with the interest thereon shall be and remain a lien upon the property in respect to which they are payable until the same is paid:

Proviso.—Provided that the duty chargeable upon any legacy given by way of annuity whether for life or otherwise shall be paid by four equal payments the first of which payments of duty shall be made before or on completing payment of the first year's annuity and the three others of such payments of duty shall be made in like manner successively before or on completing the respective payments of the three succeeding year's annuity respectively. In case the annuitant dies before the expiration of the said four years only payment of instalments which fall due before his death shall be required.

Extension of time for payment.—Provided further that the Lieutenant Governor in Council upon its being proved to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous on the estate may by order so extend the time for the payment of the said duty as shall appear just and reasonable; and the duty shall be due and payable as in the said order set forth.

(2) **Certificate of discharge to be given by Territorial treasurer.**—The treasurer of the Territories on being satisfied that the full amount of succession duty has been or will be paid in respect of an estate or any part thereof shall if required by the person accounting for the duty give a certificate to that effect which shall discharge from any further claim for succession duty the property shown by the certificate to form the estate or such part thereof as the case may be.

(3) **Certificate not a discharge in case of fraud, etc.**—Such certificate shall not discharge any person or property other than a *bona fide* purchaser for valuable consideration without notice from succession duty in case of fraud or failure to disclose material facts and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for:

Provided the said treasurer may in his discretion decline to grant such certificate until the expiration of one year from the death of the deceased testator or intestate as the case may be. 1903, Sess. 2, c. 5, s. 17.

18. Extension of time for payment of duty.—Upon the application of any person liable for the payment of any duty under this Ordinance on notice to the Territorial treasurer a judge may make an order extending the time fixed by law for payment thereof where it appears to such judge that payment within the time prescribed by this Ordinance is impossible owing to some cause over which the person liable has no control. 1903, Sess. 2, c. 5, s. 18.

19. Administrators, etc., to deduct duty before delivering property.—Any administrator, executor or trustee having in charge or trust any estate, legacy or property in respect of which duty is payable under this Ordinance shall deduct the duty therefrom or collect the duty thereon upon the appraised value thereof from the person entitled to such property and he shall not deliver any property subject to duty to any person until he has collected the duty thereon. 1903, Sess. 2, c. 5, s. 19.

20. Power to sell for payment of duty.—Executors, administrators and trustees shall have power to sell so much of the

property of the deceased as will enable them to pay the duty in the same manner as they may by law do for the payment of debts of the testator or intestate. 1903, Sess. 2, c. 5, s. 20.

21. Duty to be paid to Territorial treasurer.—Every sum of money retained by an executor, administrator or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the treasurer of the Territories or as he may direct. 1903, Sess. 2, c. 5, s. 21.

22. Refunding duty upon subsequent payment of debts.—Where any debts shall be proved against the estate of a deceased person after the payment of legacies or distribution of property from which the duty has been deducted or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee. 1903, Sess. 2, c. 5, s. 22.

23. Foreign executors, etc., not to transfer stocks, etc., until duty paid.—No foreign executor or administrator shall assign or transfer any stocks or shares in the Territories standing in the name of a deceased person or in trust for him which are liable to pay succession duty until such duty is paid to the treasurer of the Territories or security given as required by section 6 of this Ordinance and any corporation allowing a transfer of any stocks or shares contrary to this section shall be liable to pay the duty payable in respect thereof. 1903, Sess. 2, c. 5, s. 23.

24. Mode of enforcing payment of duty.—If it is made to appear on affidavit to a judge that any duty accruing under this Ordinance has not been paid according to law he may make an order by way of originating summons directing the persons interested in the property liable to the duty to appear before the court on a day certain to be therein named and show cause why said duty shall not be paid.

(2) The service of such order and the time, manner and proof thereof and fees therefor and the hearing and determining thereon and the enforcement of the judgement of the court thereon shall be according to the practice in or upon the enforcement of a judgment of the supreme court. 1903, Sess. 2, c. 5, s. 24.

25. Costs.—The costs of all proceedings under this Ordinance in the court shall be in the discretion of the court or of a judge. 1903, Sess. 2, c. 5, s. 25.

26. Limitations of actions.—Any action, matter or proceeding by or against the Territories in respect of duties or claims arising upon or out of any succession shall be commenced within six years from the time when such duties or claims became payable. 1903, Sess. 2, c. 5, s. 26.

27. Fees of clerks of court.—The clerks of the court shall be entitled to take for the performance of duties and services under this Ordinance fees similar to those payable to them under the rules of the supreme court. 1903, Sess. 2, c. 5, s. 27.

28. Lieutenant Governor to make regulations.—The Lieutenant Governor in Council may make regulations for carrying into effect the provisions of this Ordinance and to cover cases not herein provided for which shall be published forthwith in the official gazette. 1903, Sess. 2, c. 5, s. 28.

SASKATCHEWAN.

The foregoing ordinance is in force in Saskatchewan subject to the provisions of the Statutes of Saskatchewan, 1908, chap. 24 by which the following sections of the ordinance have been amended:

Sec. 3, clause 2 amended to read as follows:

"The expression 'aggregate value' means the value of the property before any debts or other allowances or exemptions are deducted therefrom and includes property outside of the Territories." (8 Edw. VII., c. 24, s. 1.)

Sec. 3, clauses 4 and 5 repealed. (8 Edw. VII., c. 24, s. 2.)

Sec. 4, clause 2 amended by omitting the words "brother, sister" in the third and fourth lines. (8 Edw. VII., c. 24, s. 3.)

Sec. 5, sub-section (3) amended to read as follows:

(3.) Where the aggregate value of the property exceeds \$25,000 and any property passes in manner aforesaid either in whole or in part to or for the benefit of the father, mother, husband, wife, child, grandchild, son-in-law, daughter-in-law or adopted child as aforesaid of the deceased, the same or so much thereof as passes, as the case may be, shall be subject to a duty at the rate and on the scale as follows:

(a.) Where the aggregate value exceeds \$25,000 but does not exceed \$100,000 one and one-half per cent.;

(b.) Where the aggregate value exceeds \$100,000 but does not exceed \$200,000 two and one-half per cent.;

(c.) Where the aggregate value exceeds \$200,000 five per cent. (8 Edw. VII., c. 24, s. 4.)

Sec. 5, sub-sections (4) and (5) amended to read as follows:

(4) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes by will, intestacy or otherwise to the grandfather or grandmother or any other lineal ancestor of the deceased except the father or mother or to any brother or sister of the deceased or to any descendant of a brother or sister of the deceased or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister shall be subject to a duty of \$5 for every \$100 of the value. (8 Edw. VII., c. 24, s. 5.)

(5) Where the aggregate value of the property of the deceased exceeds \$5,000 so much thereof as passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described or to or for the benefit of any stranger in blood to the deceased save as hereinbefore provided for shall be subject to a duty of \$10 for every \$100 of the value. (8 Edw. VII., c. 24, s. 6.)

Sec. 6, amended to read as follows:

6. Executors, etc., to file inventory and bonds.—An executor or administrator applying for letters probate or for letters of administration to the estate of a deceased person shall before the issue of letters probate or administration to him make and file with the clerk of the surrogate court in which such application is being

made a full, true and correct statement in duplicate, under oath, showing:

(a) A full itemised inventory of all the property of the deceased person including any property not situate in the Territories and the market value thereof; and

(b) The several persons to whom the same will pass under the will or intestacy and the degree of relationship, if any, in which they stand to the deceased; and the executor or administrator shall before the issue of letters probate or letters of administration deliver to the said clerk a bond in a penal sum equal to ten per cent. of the sworn value of the property of the deceased person in respect to which his estate may be liable or may become liable to succession duty, executed by himself and two sureties to be approved by the said clerk or a guarantee company to be approved by the attorney general conditioned for the due payment to his Majesty of any duty to which the estate of the deceased coming into the hands of the said executor or administrator may be found liable.

(2) The foregoing subsection shall not apply as respects the provisions requiring security to estates in respect of which no succession duty is payable or administration to which is being applied for by an official administrator.

(3) One duplicate of the said statement shall be forthwith transmitted by the said clerk of the court to the attorney general.

(4) Where property passes on the death of the deceased and no executor or administrator can be made accountable for succession duty in respect of such property every person to whom any property so passes for any beneficial interest in possession and also to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the succession duty in respect of such property and shall within two months after the death of the deceased or such later time as the attorney general shall allow deliver to the clerk of the surrogate court of the judicial district in which said property is situate an account to the best of his knowledge and belief of the property which account shall be verified under oath.

(5) Any executor or administrator who in order to escape payment of succession duty imposed by this Ordinance shall fail to include any property of the deceased in the inventory required by this section to be filed or shall distribute any part of the said estate without bringing the same into the Territories shall be personally liable to pay to his Majesty the amount of the duty which would have been payable in respect of the property so omitted or so distributed. 1903, Sess. 2, c. 5, s. 6. (As amended by 8 Edw. VII., c. 24, ss. 7, 8, 9, 10 and 11.)

Sec. 7 amended to read as follows:

7. Appraisement of appraiser.— In case the attorney general is not satisfied with the value so sworn thereto or to the correctness of the said inventory he may direct in writing some competent person to make a valuation and appraise the said property and also to appraise any property alleged to have been improperly omitted from the said inventory. 1903, Sess. 2, c. 5, s. 7. (As amended by 8 Edw. VII., c. 24, s. 12.)

Sec. 8 amended to read as follows:

8. Valuation by appraiser.—Any appraiser appointed under the provisions of the next preceding section shall forthwith give due and sufficient written notice to the executors or administrators and to such other persons as the attorney general may direct of the time and place at which he will appraise the property included in the inventory or any property which in his opinion should be included therein and shall appraise the same accordingly at its fair market value and make a written report in duplicate of the appraisement together with such other facts in relation thereto as the attorney general may by order require and such report shall forthwith be filed in the office of the clerk of the proper surrogate court and for the purpose of the said inquiry and appraisement the said appraiser shall have all the powers which may be conferred upon commissioners under *An Ordinance respecting Inquiries concerning Public Matters*, being chapter 12 of *The Consolidated Ordinances, 1898*.

(2) The appraiser shall be entitled to receive the sum of \$5 per day for services performed under this Ordinance and his actual and necessary travelling expenses and the same shall be paid to him by the Territorial treasurer.

(3) One duplicate of the said report shall be forthwith transmitted by the clerk of the said court to the attorney general. 1903, Sess. 2, c. 5, s. 8. (As amended by 8 Edw. VII, c. 24, ss. 13 and 14.)

Sec. 9 amended to read as follows:

9. Mode of assessing property liable to duty.—If the attorney general and the other parties interested do not agree thereon the provincial auditor shall assess and fix the cash value at the date of the death of the deceased of all estates, interests, annuities and life estates. 1903, Sess. 2, c. 5, s. 9. (As amended by 8 Edw. VII, c. 24, s. 15.)

Sec. 10 amended to read as follows.

10. Appeal from appraisement or assessment.—The attorney general or any interested person dissatisfied with the appraisement or assessment may appeal therefrom to a judge within thirty days after the making and filing of such assessment and upon such appeal the said judge shall have jurisdiction to determine all questions of valuation and the liability of the appraised estate or any part thereof for such duty and the decision of the said judge shall be final. 1903, Sess. 2, c. 5, s. 10. (As amended by 8 Edw. VII, c. 24, s. 16.)

Sec. 16, sub-sec. (1) amended by the substitution of the words "attorney general" for the words "Territorial treasury" in the seventh line. (8 Edw. VII, c. 24, s. 17.)

Sec. 16, sub-sec. (4) amended by substituting the words "attorney general" for the words "treasurer of the territories" in the eighth line, and by substituting the words "provincial treasurer on the recommendation of the attorney general" for the word "treasurer" in the fifteenth line. (8 Edw. VII, c. 24, s. 18.)

Sec. 17, sub-sec. (2) amended by inserting the words "no duty is payable on the estate or" after the word "that" in the second line. (8 Edw. VII, c. 24, s. 19.)

Sec. 18 amended to read as follows:

18. Extension of time for payment of duty.—Upon the application of any person liable for the payment of any duty under this

Ordinance on notice to the attorney general, the judge of the proper surrogate court may make an order extending the time fixed by law for payment thereof where it appears to such judge that payment within the time prescribed by this Ordinance is impossible owing to some cause over which the person liable has no control. 1903, Sess. 2, c. 5, s. 18. (As amended by 8 Edw. VII, c. 24, s. 20.)

Sec. 22 amended to read as follows:

22. Refunding duty upon subsequent payment of debts.—

Where any debts shall be proved against the estate of a deceased person after the payment of legacies or distribution of property from which the duty has been deducted or upon which it has been paid and a refund is made by the legatee, devisee, heir or next of kin a proportion of the duty so paid shall be repaid to him by the executor, administrator or trustee if said duty has not been paid to the provincial treasurer or by the provincial treasurer if it has been so paid. 1903, Sess. 2, c. 5, s. 22. (As amended by 8 Edw. VII, c. 24, s. 21.)

Sec. 23. amended to read as follows:

23. Foreign executors, etc., not to transfer stocks, etc., until duty paid.—No foreign executor or administrator shall assign or transfer any stocks or shares in the Territories standing in the name of a deceased person or in trust for him which are liable to pay succession duty until such duty is paid as herein provided or security given as required by section 6 of this Ordinance and any corporation allowing a transfer of any stocks or shares contrary to this section, shall be liable to pay the duty payable in respect thereof. 1903, Sess. 2, c. 5, s. 23. (As amended by 8 Edw. VII, c. 24, s. 22).

Sec. 27 amended to read as follows:

27. Fees of clerks of court.—The officials of the courts shall be entitled to take for the performance of duties and services under this Ordinance fees similar to those payable to them under the rules of the court in which the proceedings are taken. 1903, Sess. 2, c. 5, s. 27. (As amended by 8 Edw. VII, c. 24, s. 23.)

COPYRIGHT

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IMPERIAL COPYRIGHT ACT.

The Imperial Copyright Act., 5-6 Vict., c. 45 is printed in full below. The act expressly provides 'that it extends to "every part of the British Dominions" (sec. 29), and it has been held to be in force in Canada. (Black v. Imperial Book Co., 1904, 8 O. L. R. 9, 11; sed. cf. 35 S. C. R. 488.) The act protects the productions of foreign authors wherever resident, where there is a first or contemporaneous publication within the Empire (Life Publishing Co. v. Rose Publishing Co., 1906, 12 O. L. R., 386; see the Imperial Act 49-50 Vict., c. 33., s. 8 (International Copyright Act., 1886) which provides that the Copyright Act, 1842, shall, subject to the provisions of the said Act, apply to a literary work first produced in a British possession in like manner as it applies to a work first produced in the United Kingdom. (cf. Copinger, p. 501.)

The Fine Arts Copyright Act, 1862 (Imperial Act, 25-26 Vict., c. 68) confers on British subjects and persons resident in British Dominions copyright in pictures, drawings and photographs throughout the United Kingdom, but the Act does not extend the benefits of the copyright to any part of the British Dominions outside the United Kingdom. (Graves, v. Gorrie (1903), A. C. 496 cf. S. C. 3 O. L. R. 697, 699, 700.)

The Act 5-6 Vict., c. 45, above referred to applies only to a book, etc., of which there is first or contemporaneous publication within the British dominions. The Imperial Act 7-8 Vict. c. 12 (The International Copyright Act, 1844) restricts copyright in any book "first published out of Her Majesty's dominions" to such right as a person may have become entitled to under this last mentioned Act. (cf. Grossman v. Canada Cycle Co., 1902, 5 O. L. R. 55.) See also the International Copyright Acts (Imperial of 1852, 1875 and 1886. As to the position of the colonies under these Acts and the Berne convention, see Copinger, p. 502.

IMPERIAL ACT, 5 & 6 VICT. C. 45.

An Act to amend the Law of Copyright.

(1st July, 1842.)

Repeal of former Acts: 8 Anne, c. 19.—41 G. 3, c. 107.—54 G. 3, c. 156.—Whereas it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That from the passing of this Act an Act passed in the eighth year of Her Majesty Queen Anne, intituled "An Act for the Encouragement of Learning, by vesting the Copies of printed Books in the Authors or Purchasers of such Copies during the Times therein mentioned;"

and also an Act passed in the forty-first year of the reign of His Majesty King George the Third, intituled "An Act for the further Encouragement of Learning in the United Kindom of Great Britain and Ireland, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns, for the Time therein mentioned;" and also an Act passed in the fifty-fourth year of the reign of His Majesty King George the Third, intituled "An Act to amend the several Acts for the Encouragement of Learning, by securing the Copies and Copyright of printed Books to the Authors of such Books, or their Assigns," be and the same are hereby repealed, except so far as the continuance of either of them may be necessary for carrying on or giving effect to any proceedings at law or in equity pending at the time of passing this Act, or for enforcing any cause of action or suit, or any right or contract, then subsisting.

II. Interpretation of Act.—And be it enacted, That in the construction of this Act the word "book" shall be construed to mean and include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published; that the words "dramatic piece" shall be construed to mean and include every tragedy, comedy, play, opera, farce, or other scenic, musical, or dramatic entertainment; that the word "copyright" shall be construed to mean the sole and exclusive liberty of printing or otherwise multiplying copies of any subject to which the said word is herein applied; that the words "personal representative" shall be construed to mean and include every executor, administrator, and next of kin entitled to administration; that the word "assigns" shall be construed to mean and include every person in whom the interest of an author in copyright shall be vested, whether derived from such author before or after the publication of any book, and whether acquired by sale, gift, bequest, or by operation of law, or otherwise; that the words "British Dominions" shall be construed to mean and include all parts of the United Kindom of Great Britain and Ireland, the Islands of Jersey and Guernsey, all parts of the East and West Indies, and all the colonies, settlements, and possessions of the Crown which now are or hereafter may be acquired; and that whenever in this Act, in describing any person, matter, or thing, the word importing the singular number or the masculine gender only is used, the same shall be understood to include and to be applied to several persons as well as one person, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there shall be something in the subject or context repugnant to such construction.

III. Endurance of term of copyright in any book hereafter to be published in the lifetime of the author;—if published after the author's death.—And be it enacted, That the copyright in every book which shall after the passing of this Act be published in the lifetime of its author shall endure for the natural life of such author, and for the further term of seven years, commencing at the time of his death, and shall be the property of such author and his assigns: Provided always, that if the said term of seven years shall expire before the end of forty-two years from the first publication of such book, the copyright shall in that case endure for such period of forty-two years; and that the copyright in every book which shall be published after the death of its author shall endure for the term of forty-two years from the first

publication thereof, and shall be the property of the proprietor of the author's manuscript from which such book shall be first published, and his assigns.

IV. In cases of subsisting copyright, the term to be extended, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term, unless its extension be agreed to between the proprietor and the author.

—And whereas it is just to extend the benefits of this Act to authors of books published before the passing thereof, and in which copyright still subsists, be it enacted, That the copyright which at the time of passing this Act shall subsist in any book theretofore published (except as herein-after mentioned) shall be extended and endure for the full term provided by this Act in cases of books there-after published, and shall be the property of the person who at the time of passing of this Act shall be the proprietor of such copyright: Provided always, that in all cases in which such copyright shall belong in whole or in part to a publisher or other person who shall have acquired it for other consideration than that of natural love and affection, such copyright shall not be extended by this Act, but shall endure for the term which shall subsist therein at the time of passing of this Act, and no longer, unless the author of such book, if he shall be living, or the personal representative of such author, if he shall be dead, and the proprietor of such copyright, shall, before the expiration of such term, consent and agree to accept the benefits of this Act in respect of such book, and shall cause a minute of such consent in the form in that behalf given in the schedule to this Act annexed to be entered in the book of registry herein-after directed to be kept, in which case such copyright shall endure for the full term by this Act provided in cases of books to be published after the passing of this Act, and shall be the property of such person or persons as in such minute shall be expressed.

V. Judicial committee of the Privy Council may license the republication of books which the proprietor refuses to republish after death of the author.—And whereas it is expedient to provide against the suppression of books of importance to the public, be it enacted, That it shall be lawful for the judicial committee of Her Majesty's Privy Council, on complaint made to them that the proprietor of the copyright in any book after the death of its author has refused to republish or to allow the republication of the same, and that by reason of such refusal such book may be withheld from the public, to grant a licence to such complainant to publish such book, in such manner and subject to such conditions as they may think fit, and that it shall be lawful for such complainant to publish such book according to such licence.

VI. Copies of books published after the passing of this Act, and of all subsequent editions, to be delivered within certain times at the British Museum.—And be it enacted, That a printed copy of the whole of every book which shall be published after the passing of this Act, together with all maps, prints, or other engravings belonging thereto, finished and coloured in the same manner as the best copies of the same shall be published, and also of any second or subsequent edition which shall be so published with any additions or alterations, whether the same shall be in letter-press, or in the maps, prints, or other engravings belonging there-

to, and whether the first edition of such book shall have been published before or after the passing of this Act, and also of any second or subsequent edition of every book of which the first or some preceding edition shall not have been delivered for the use of the British Museum, bound, sewed, or stitched together, and upon the best paper on which the same shall be printed, shall within one calendar month after the day on which any such book shall first be sold, published, or offered for sale within the bills of mortality, or within three calendar months if the same shall first be sold, published, or offered for sale in any other part of the United Kingdom, or within twelve calendar months after the same shall first be sold, published, or offered for sale in any other part of the British dominions be delivered, on behalf of the publisher thereof, at the British Museum.

VII. Mode of delivering at the British Museum.—And be it enacted, That every copy of any book which under the provisions of this Act ought to be delivered as aforesaid shall be delivered at the British Museum between the hours of ten in the forenoon and four in the afternoon on any day except Sunday, Ash Wednesday, Good Friday, and Christmas Day, to one of the officers of the said museum, or to some person authorized by the trustees of the said museum to receive the same, and such officer or other person receiving such copy is hereby required to give a receipt in writing for the same, and such delivery shall, to all intents and purposes, be deemed to be good and sufficient delivery under the provisions of this Act.

VIII. A copy of every book to be delivered within a month after demand to the officer of the Stationers' Company, for the following libraries: the Bodleian at Oxford, the Public Library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin.—And be it enacted, That a copy of the whole of every book, and of any second or subsequent edition of every book containing additions and alterations, together with all maps and prints belonging thereto, which after the passing of this Act shall be published, shall, on demand thereof in writing, left at the place of abode of the publisher thereof, at any time within twelve months next after the publication thereof, under the hand of the officer of the Company of Stationers who shall from time to time be appointed by the said company for the purposes of this Act, or under the hand of any other person thereto authorized by the persons or bodies politic and corporate, proprietors and managers of the libraries following, (*videlicet*,) the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of the College of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, be delivered, upon the paper of which the largest number of copies of such book or edition shall be printed for sale, in the like condition as the copies prepared for sale by the publisher thereof respectively, within one month after demand made thereof in writing as aforesaid, to the said officer of the said Company of Stationers for the time being, which copies the said officer shall and he is hereby required to receive at the hall of the said company, for the use of the library for which such demand shall be made within such twelve months as aforesaid; and the said officer is hereby required to give a receipt in writing for the same, and within one month after any such

book shall be so delivered to him as aforesaid to deliver the same for the use of such library.

IX. Publishers may deliver the copies to the libraries, instead of at the Stationers' Company.—Provided also and be it enacted, That if any publisher shall be desirous of delivering the copy of such book as shall be demanded on behalf of any of the said libraries at such library, it shall be lawful for him to deliver the same at such library, free of expense, to such librarian or other person authorized to receive the same (who is hereby required in such case to receive and give a receipt in writing for the same), and such delivery shall to all intents and purposes of this Act be held as equivalent to a delivery to the said officer of the Stationers' Company.

X. Penalty for default in delivering copies for the use of the libraries.—And be it enacted, That if any publisher of any such book, or of any second or subsequent edition of any such book, shall neglect to deliver the same pursuant to this Act, he shall for every such default forfeit, besides the value of such copy of such book or edition which he ought to have delivered, a sum not exceeding five pounds, to be recovered by the librarian or other officer (properly authorized) of the library for the use whereof such copy should have been delivered, in a summary way, on conviction before two justices of the peace for the county or place where the publisher making default shall reside, or by action of debt or other proceeding of the like nature, at the suit of such librarian or other officer, in any court of record in the United Kingdom, in which action, if the plaintiff shall obtain a verdict, he shall recover his costs reasonably incurred, to be taxed as between attorney and client.

XI. Book of registry to be kept at Stationers' Hall.—And be it enacted, That a book of registry, wherein may be registered, as herein-after enacted, the proprietorship in the copyright of books, and assignments thereof, and in dramatic and musical pieces, whether in manuscript or otherwise, and licences affecting such copyright, shall be kept at the hall of the Stationers' Company by the officer appointed by the said company for the purposes of this Act, and shall at all convenient times be open to the inspection of any person, on payment of one shilling for every entry which shall be searched for or inspected in the said book; and that such officer shall, whenever thereunto reasonably required, give a copy of any entry in such book, certified under his hand, and impressed with the stamp of the said company, to be provided by them for that purpose, and which they are hereby required to provide, to any person requiring the same, on payment to him of the sum of five shillings; and such copies so certified and impressed shall be received in evidence in all courts, and in all summary proceedings, and shall be *prima facie* proof of the proprietorship or assignment of copyright or licence as therein expressed, but subject to be rebutted by other evidence, and in the case of dramatic or musical pieces shall be *prima facie* proof of the right of representation or performance, subject to be rebutted as aforesaid.

XII. Making a false entry in the book of registry, a misdemeanor.—And be it enacted, That if any person shall wilfully make or cause to be made any false entry in the registry book of the Stationers' Company, or shall wilfully produce or cause to be tendered in evidence any paper falsely purporting to be a copy of

any entry in the said book, he shall be guilty of an indictable misdemeanor, and shall be punished accordingly.

XIII. Entries of copyright may be made in the book of registry.—And be it enacted, That after the passing of this Act, it shall be lawful for the proprietor of copyright in any book heretofore published, or in any book hereafter to be published, to make entry in the registry book of the Stationers' Company of the title of such book, the time of the first publication thereof, the name and place of abode of the publisher thereof, and the name and place of abode of the proprietor of the copyright of the said book, or of any portion of such copyright, in the form in that behalf given in the schedule to this Act annexed, upon payment of the sum of five shillings to the officer of the said company; and that it shall be lawful for every such registered proprietor to assign his interest, or any portion of his interest therein, by making entry in the said book of registry of such assignment, and of the name and place of abode of the assignee thereof, in the form given in that behalf in the said schedule, on payment of the like sum; and such assignment so entered shall be effectual in law to all intents and purposes whatsoever, without being subject to any stamp or duty, and shall be of the same force and effect as if such assignment had been made by deed.

XIV. Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or judge in vacation, who may order such entry to be varied or expunged.—And be it enacted, That if any person shall deem himself aggrieved by any entry made under colour of this Act in the said book of registry, it shall be lawful for such person to apply by motion to the Court of Queen's Bench, Court of Common Pleas, or Court of Exchequer, in term time, or to apply by summons to any judge of either of such courts in vacation, for an order that such entry may be expunged or varied; and that upon any such application by motion or summons to either of the said courts, or to a judge as aforesaid, such court or judge shall make such order for expunging, varying, or confirming such entry, either with or without costs, as to such court or judge shall seem just; and the officer appointed by the Stationers Company for the purposes of this Act shall, on the production to him of any such order for expunging or varying any such entry, expunge or vary the same according to the requisitions of such order.

XV. Remedy for the piracy of books by action on the case.—And be it enacted, That if any person shall, in any part of the British dominions, after the passing of this Act, print or cause to be printed, either for sale or exportation, any book in which there shall be subsisting copyright, without the consent in writing of the proprietor thereof, or shall import for sale or hire any such book, so having been unlawfully printed, from parts beyond the sea, or, knowing such book to have been so unlawfully printed or imported, shall sell, publish, or expose to sale or hire, or cause to be sold, published, or exposed to sale or hire, or shall have in his possession, for sale or hire, any such book so unlawfully printed or imported, without such consent as aforesaid, such offender shall be liable to a special action on the case at the suit of the proprietor of such copyright to be brought, in any court of record in that part of the British dominions in which the offence shall be committed: Provided always, that in Scotland such offender shall be liable to an action

in the Court of Session in Scotland, which shall and may be brought and prosecuted in the same manner in which any other action of damages to the like amount may be brought and prosecuted there.

XVI. In actions for piracy the defendant to give notice of the objections to the plaintiff's title on which he means to rely.—And be it enacted, That after the passing of this Act, in any action brought within the British dominions against any person for printing any such book for sale, hire, or exportation, or for importing, selling, publishing, or exposing to sale or hire, or causing to be imported, sold, published, or exposed to sale or hire, any such book, the defendant, on pleading thereto, shall give to the plaintiff a notice in writing of any objections on which he means to rely on the trial of such action; and if the nature of his defence be, that the plaintiff in such action was not the author or first publisher of the book in which he shall by such action claim copyright, or is not the proprietor of the copyright therein, or that some other person than the plaintiff was the author or first publisher of such book, or is the proprietor of the copyright therein, then the defendant shall specify in such notice the name of the person who he alleged to have been the author or first publisher of such book, or the proprietor of the copyright therein, together with the title of such book, and the time when and the place where such book was first published, otherwise the defendant in such action shall not at the trial or hearing of such action be allowed to give any evidence that the plaintiff in such action was not the author or first publisher of the book in which he claims such copyright as aforesaid, or that he was not the proprietor of the copyright therein; and at such trial or hearing no other objection shall be allowed to be made on behalf of such defendant than the objection stated in such notice, or that any other person was the author or first publisher of such book, or the proprietor of the copyright therein, than the person specified in such notice, or give in evidence in support of his defence any other book than one substantially corresponding in title, time, and place of publication with the title, time, and place specified in such notice.

XVII. No person except the proprietor, etc., shall import into the British dominions for sale or hire any book first composed, etc., within the United Kingdom, and reprinted elsewhere under penalty of forfeiture thereof, and also of £10 and double the value.—Books may be seized by officers of customs or excise.—And be it enacted, That after the passing of this Act it shall not be lawful for any person, not being the proprietor of the copyright, or some person authorized by him, to import into any part of the United Kingdom, or into any other part of the British dominions, for sale or hire, any printed book first composed or written or printed and published in any part of the said United Kingdom, wherein there shall be copyright, and reprinted in any country or place whatsoever out of the British dominions; and if any person, not being such proprietor or person authorized as aforesaid, shall import or bring, or cause to be imported or brought, for sale or hire, any such printed book, into any part of the British dominions, contrary to the true intent and meaning of this Act, or shall knowingly sell, publish, or expose to sale or let to hire, or have in his possession for sale or hire, any such book, then every such book shall be forfeited, and shall be seized by any officer of customs or excise, and the same shall be destroyed by such officer; and

every person so offending, being duly convicted thereof before two justices of the peace for the county or place in which such book shall be found, shall also for every such offence forfeit the sum of ten pounds and double the value of every copy of such book which he shall so import or cause to be imported into any part of the British dominions or shall knowingly sell, publish, or expose to sale, or let to hire, or shall cause to be sold, published, or exposed to sale or let to hire, or shall have in his possession for sale or hire, contrary to the true intent and meaning of this Act; five pounds to the use of such officer of customs or excise, and the remainder of the penalty to the use of the proprietor of the copyright in such book.

XVIII. As to the copyright in encyclopædias, periodicals, and works published in a series, reviews, or magazines.—*Proviso for authors who have reserved the right of publishing their articles in a separate form.*—And be it enacted, That when any publisher or other person shall, before or at the time of the passing of this Act, have projected, conducted, and carried on, or shall hereafter project, conduct, and carry on, or be the proprietor of any encyclopædia, review, magazine, periodical work, or work published in a series of books or parts, or any book whatsoever, and shall have employed or shall employ any persons to compose the same, or any volumes, parts, essays, articles, or portions thereof, for publication in or as part of the same, and such work, volumes, parts, essays, articles or portions shall have been or shall hereafter be composed under such employment, on the terms that the copyright therein shall belong to such proprietor, projector, publisher, or conductor, and paid for by such proprietor, projector, publisher, or conductor, the copyright in every such encyclopædia, review, magazine, periodical work, and work published in a series of books or parts, and in every volume, part, essay, article, and portion so composed and paid for, shall be the property of such proprietor, projector, publisher, or other conductor, who shall enjoy the same rights as if he were the actual author thereof and shall have such term of copyright therein as is given to the authors of books by this Act; except only that in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature after the term of twenty-eight years from the first publication thereof respectively the right of publishing the same in a separate form shall revert to the author for the remainder of the term given by this Act: Provided always, that during the term of twenty-eight years the said proprietor, projector, publisher, or conductor shall not publish any such essay, article, or portion separately or singly without the consent previously obtained of the author thereof, or his assigns: Provided also, that nothing herein contained shall alter or affect the right of any person who shall have been or who shall be so employed as aforesaid to publish any such his composition in a separate form, who by any contract, express or implied, may have reserved or may hereafter reserve to himself such right; but every author reserving, retaining, or having such right shall be entitled to the copyright in such composition when published in a separate form, according to this Act, without prejudice to the right of such proprietor, projector, publisher, or conductor or as aforesaid.

XIX. Proprietors of encyclopædias, periodicals, and works published in a series, may enter at once at Stationers' Hall, and thereon have the benefit of the registration of the whole.—And be it enacted, That the proprietor of the copyright in any encyclopædia, review, magazine, periodical work, or other work published in a series of books or parts shall be entitled to all the benefits of the registration at Stationers' Hall under this Act, on entering in the said book of registry the title of such encyclopædia, review, periodical work, or other work, published in a series of books or parts, the time of the first publication of the first volume, number, or part thereof, or of the first number or volume first published after the passing of this Act in any such work which shall have been published heretofore, and the name and place of abode of the proprietor thereof, and of the publisher thereof, when such publisher shall not also be the proprietor thereof.

XX. The provisions of 3 & 4 W. 4, c. 15, extended to musical compositions and the term of copyright, as provided by this Act, applied to the liberty of representing dramatic pieces and musical compositions.—And whereas an Act was passed in the third year of the reign of His late Majesty, to amend the law relating to dramatic literary property, and it is expedient to extend the term of the sole liberty of representing dramatic pieces given by that Act to the full time by this Act provided for the continuance of copyright: And whereas it is expedient to extend to musical compositions the benefits of that Act, and also of this Act, be it therefore enacted, That the provisions of the said Act of His late Majesty, and of this Act, shall apply to musical compositions, and that the sole liberty of representing or performing, or causing or permitting to be represented or performed, any dramatic piece or musical composition, shall endure and be the property of the author thereof, and his assigns, for the term in this Act provided for the duration of copyright in books; and the provisions herein-before enacted in respect of the property of such copyright, and of registering the same shall apply to the liberty of representing or performing any dramatic piece or musical composition, as if the same were herein expressly re-enacted and applied thereto, save and except that the first public representation or performance of any dramatic piece or musical composition shall be deemed equivalent, in the construction of this Act, to the first publication of any book: Provided always, that in case of any dramatic piece, or musical composition in manuscript, it shall be sufficient for the person having the sole liberty of representing or performing, or causing to be represented or performed the same, to register only the title thereof, the name and place of abode, of the author or composer thereof, the name and place of abode of the proprietor thereof, and the time and place of its first representation or performance.

XXI. Proprietors of right of dramatic representations shall have all the remedies given by 3 & 4 W. 4, c. 15.—And be it enacted, That the person who shall at any time have the sole liberty of representing such dramatic piece or musical composition shall have and enjoy the remedies given and provided in the said Act of the third and fourth years of the reign of His late Majesty King William the Fourth, passed to amend the laws relating to dramatic literary property, during the whole of his interest therein, as fully as if the same were re-enacted in this Act.

XXII. Assignment of copyright of a dramatic piece not to convey the right of representation.—And be it enacted, That no assignment of the copyright of any book consisting of or containing a dramatic piece or musical composition shall be holden to convey to the assignee the right of representing or performing such dramatic piece or musical composition, unless an entry in the said registry book shall be made of such assignment, wherein shall be expressed the intention of the parties that such right should pass by such assignment.

XXIII. Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action.—And be it enacted, That all copies of any book wherein there shall be copyright, and of which entry shall have been made in the said registry book, and which shall have been unlawfully printed or imported without the consent of the registered proprietor of such copyright, in writting under his hand first obtained, shall be deemed to be the property of the proprietor of such copyright, and who shall be registered as such; and such registered proprietor shall, after demand thereof in writting, be entitled to sue for and recover the same, or damages for the detention thereof, in an action of detinue, from any party who shall detain the same, or to sue for and recover damages for the conversion thereof in an action of trover.

XXIV. No proprietor of copyright commencing after this Act shall sue or proceed for any infringement before making entry in the book of registry.—Proviso for dramatic pieces.—And be it enacted, That no proprietor of copyright in any book which shall be first published after the passing of this Act shall maintain any action or suit, at law or in equity, or any summary proceeding in respect of any infringement of such copyright, unless he shall, before commencing such action, suit, or proceeding, have caused an entry to be made, in the book of registry of the Stationers' Company, of such book, pursuant to this Act: Provided always, that the omission to make such entry shall not affect the copyright in any book, but only the right to sue or proceed in respect of the infringement thereof as aforesaid: Provided also, that nothing herein contained shall prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece shall have by virtue of the Act passed in the third year of the reign of His late Majesty King William the Fourth, to amend the laws relating to dramatic literary property, or of this Act, although no entry shall be made in the book of registry aforesaid.

XXV. Copyright shall be personal property.—And be it enacted, That all copyright shall be deemed personal property, and shall be transmissible by bequest. or, in case of intestacy, shall be subject to the same law of distribution as other personal property, and in Scotland shall be deemed to be personal and moveable estate.

XXVI. General issue.—Limitation of actions;—not to extend to actions, &c., in respect of the delivery of books.—And be it enacted, That if any action or suit shall be commenced or brought againt any person or persons whomsoever for doing or causing to be done anything in pursuance of this Act, the defendant or defendants in such action may plead the general issue, and give the special matter in evidence; and if upon such action a verdict shall be given for the defendant, or the plaintiff shall become non-

suited, or discontinue his action, then the defendant shall have and recover his full costs, for which he shall have the same remedy as a defendant in any case by law hath; and that all actions, suits, bills, indictments, or informations for any offence that shall be committed against this Act shall be brought, sued, and commenced within twelve calendar months next after such offence committed, or else the same shall be void and of none effect; provided that such limitation of time shall not extend or be construed to extend to any actions, suits, or other proceedings which under the authority of this Act shall or may be brought, sued, or commenced for or in respect of any copies of books to be delivered for the use of the British Museum, or of any one of the four libraries hereinbefore mentioned.

XXVII. Saving the rights of the universities, and the colleges of Eton, Westminster, and Winchester.—Provided always, and be it enacted, That nothing in this Act contained shall affect or alter the rights of the two universities of Oxford and Cambridge, the colleges or houses of learning within the same, the four universities in Scotland, the college of the Holy and Undivided Trinity of Queen Elizabeth near Dublin, and the several colleges of Eton, Westminster, and Winchester, in any copyrights heretofore and now vested or hereafter to be vested in such universities and colleges respectively, anything to the contrary herein contained notwithstanding.

XXVIII. Saving all subsisting rights, contracts, and engagements.—Provided also, and be it enacted, That nothing in this Act contained shall affect, alter, or vary any right subsisting at the time of passing this Act, except as herein expressly enacted; and all contracts, agreements, and obligations made and entered into before the passing of this Act, and all remedies relating thereto, shall remain in full force, anything herein contained to the contrary notwithstanding.

XXIX. Extent of the Act.—And be it enacted, That this Act shall extend to the United Kingdom of Great Britain and Ireland, and to every part of the British dominions.

XXX. Act may be amended this Session.—And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present session of parliament.

SCHEDULE to which the preceding Act refers.

No. 1.

FORM of MINUTE of CONSENT to be entered at Stationers Hall.

We, the undersigned, A. B. of the Author of a certain Book, intituled Y. Z. [or the personal representative of the Author, *as the case may be*,] and C. D. of do hereby certify, That we have consented and agreed to accept the Benefits of the Act passed in the Fifth Year of the Reign of Her Majesty Queen Victoria, Cap. , for the Extension of the Term of Copyright therein provided by the said Act, and hereby declare that such extended Term of Copyright therein is the Property of the said A. B. or C. D.

Dated this day of 18

(Signed)

A. B.
C.D.

Witness

To the Registering Officer appointed by the Stationers Company.

No. 2.

FORM of REQUIRING ENTRY of PROPRIETORSHIP.

I, A. B. of do hereby certify, That I am the Proprietor of the Copyright of a Book, intituled Y. Z., and I hereby require you to make entry in the Register Book of the Stationers Company of my Proprietorship of such Copyright, according to the Particulars underwritten.

Title of Book.	Name of Publisher, and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
X.Y.		A.B.	

Dated this day of 18 .

Witness, C. D. (Signed) A. B.

No. 3.

ORIGINAL ENTRY of PROPRIETORSHIP of COPYRIGHT of a BOOK.

Time of making the Entry.	Title of Book.	Name of the Publisher and Place of Publication.	Name and Place of Abode of the Proprietor of the Copyright.	Date of First Publication.
	Y.Z.	A.B.	C.D.	

No. 4.

FORM of CONCURRENCE of the PARTY assigning in any Book. previously registered.

I, A. B. of being the assigner of the Copyright of the Book hereunder described, do hereby require you to make entry of the Assignment of the Copyright therein.

Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
<i>Y.Z.</i>	<i>A.B.</i>	<i>C.D.</i>

Dated this day of 18

(Signed) *A. B.*

No. 5.

FORM of ENTRY of ASSIGNMENT of COPYRIGHT in any BOOK
previously registered.

Date of Entry.	Title of Book.	Assigner of the Copyright.	Assignee of Copyright.
	<i>[Set out the Title of the Book, and refer to the Page of the Registry Book in which the original Entry of the Copyright thereof is made.]</i>	<i>A B.</i>	<i>C.D.</i>

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REVISED STATUTES OF CANADA.

Chapter 70.

AN ACT RESPECTING COPYRIGHT.

NOTE.—The original Act is chapter 88 of 38 Vic., although there is another Act passed in the same year also chaptered 88. It was assented to by Her late Majesty under the authority of the Imperial Act 38-39 Vic., cap. 53.

SHORT TITLE.

1. Short Title.—This Act may be cited as "*The Copyright Act*," R. S., c. 62, s. 1.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a.) "Minister" means the Minister of Agriculture;
- (b.) "Department" means the Department of Agriculture;
- (c.) "Legal representatives" includes heirs, executors, administrators, and assigns or other legal representatives. R. S., c. 62, s. 2.

PART I.

REGISTERS OF COPYRIGHTS.

3. Minister shall cause to be kept.—The Minister shall cause to be kept, at the Department books to be called the "Registers of Copyrights," in which proprietors of literary, scientific and artistic works or compositions, may have the same registered in accordance with the provisions of this Act. R. S., c. 62, s. 3.

SUBJECTS AND CONDITIONS OF COPYRIGHT.

4. Who may have copyright.—For twenty-eight years.—Translations.—Any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an international copyright treaty with the United Kingdom, who is the author of any book, map, chart or musical composition, or of any original painting, drawing, statue, sculpture or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print, cut, or engraving, and the legal representatives of such person or citizen shall for the term of twenty-eight years, from the time of recording the copyright thereof in the manner hereinafter directed, have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific or artistic work or composition, in whole or in part, and of allowing translations of such work from one language into other languages to be printed or reprinted and sold. R.S., c. 62, s. 4.

5. Duration.—In no case shall the said sole and exclusive right and liberty in Canada continue to exist after it has expired elsewhere. R.S., c. 62, s. 5.

6. Conditions for obtaining copyright.—The condition for obtaining such copyright shall be that the said literary, scientific or artistic works shall be printed and published or reprinted and republished in Canada, or in the case of works of art that they shall be produced or reproduced in Canada, whether they are so published or produced for the first time, or contemporaneously with or subsequently to publication or production elsewhere. R.S., c. 62, s. 5.

7. Exception as to Immoral Works.—No literary, scientific or artistic work which is immoral, licentious, irreligious, or treasonable or seditious, shall be the legitimate subject of such registration or copyright. R. S., c. 62, s. 5.

8. Copyright in Canada of British copyright works.—Importation.—Every work of which the copyright has been granted and is subsisting in the United Kingdom, and copyright of which is not secured or subsisting in Canada, under any Act of the Parliament of Canada, or of the Legislature of the late province of Canada, or of the legislature of any of the provinces forming part of Canada, shall, when printed and published, or reprinted and republished in Canada, be entitled to copyright under this Act; but nothing in this Act shall, except as hereinafter provided, be held to prohibit the importation from the United Kingdom of copies of any such work lawfully printed there.

2. Foreign reprints imported may be sold.—Burden of proof.—If any such copyright work is reprinted subsequently to its publication in the United Kingdom, any person who has, previously to the date of entry of such work upon the Registers of Copyright, imported any foreign reprints, may dispose of such reprints by sale or otherwise; but the burden of proof of establishing the extent and regularity of the transaction shall in such case be upon such person. R. S., c. 62, s. 6; 63-64 B., c. 25, s. 1.

9. Registration of Work first published in Separate Articles in Periodical.—Any literary work intended to be published in pamphlet or book form, but which is first published in separate articles in a newspaper or periodical, may be registered under this Act while it is so preliminarily published, if the title of the manuscript and a short analysis of the work are deposited at the department, and if every separate article so published is preceded by the words "Registered in accordance with the Copyright Act" provided that the work, when published in book or pamphlet form, shall be subject, also, to the other requirements of this Act. R. S., c. 62, s. 7.

10. Books published anonymously.—If a book is published anonymously, it shall be sufficient to enter it in the name of the first publisher thereof, either on behalf of the unnamed author, or on behalf of such first publisher, as the case may be. R. S., c. 62, s. 8.

11. Deposit of Copies Department.—Record of Copyright.—No person shall be entitled to the benefit of this Act, unless he has deposited at the department three copies of the book, map, chart, musical composition, photograph, print, cut, or engraving and in the case of paintings, drawings, statuary and sculpture, unless he has furnished a written description of such works of art; and the Minister shall cause the copyright of the same to be recorded forwith, in a book to be kept for that purpose, in the man-

ner adopted by him or prescribed by the rules and forms made from time to time as herein provided. R. S., c. 62, s. 9, 58-59 V., c. 37, s. 1.

12. One copy to Library of Parliament and British Museum.—The Minister shall cause one of such three copies of such book, map, chart, musical composition, photograph, print, cut or engraving, to be deposited in the Library of the Parliament of Canada and one in the British Museum. R. S., c. 62, s. 10; 58-59 V., c. 37, s. 2.

13. As to Second and Subsequent Editions.—It shall not be requisite to deliver any printed copy of the second or of any subsequent edition of any book unless the same contains very important alterations or additions. R. S., c. 62, s. 11.

14. Notice of Copyright to Appear on Work.—No person shall be entitled to the benefit of this Act unless he gives information of the copyright being secured.

(a.) If the work is a book, by causing to be inserted in the several copies of every edition published during the term secured, on the title-page, or on the page immediately following:

(b.) Or if the work is a map, chart, musical composition, print, cut, engraving or photograph by causing to be impressed on the face thereof, or,

(c.) If the work is a volume of maps, charts, music, engravings or photographs by causing to be impressed upon the title-page or frontispiece thereof;

the Words,—*Entered according to Act of the Parliament of Canada, in the year, by A. B., at the Department of Agriculture.*

2. Exception.—As regards paintings, drawings, statuary and sculptures the signature of the artist shall be deemed a sufficient notice of such proprietorship. R. S., c. 62, s. 12.

15. Interim Copyright, How Obtainable.—The author of any literary, scientific or artistic work or his legal representatives, may, pending the publication or republication thereof in Canada, obtain an interim copyright therefor by depositing at the department a copy of the title or a designation of such work, intended for publication or republication in Canada,

2. Registration.—Such title or designation shall be registered in an interim copyright register at the department,—to secure to such author aforesaid or his legal representatives, the exclusive rights recognized by this Act, previous to publication or republication in Canada;

3. Duration.—Such interim registration shall not endure for more than one month from the date of the original publication elsewhere, within which period the work shall be printed or reprinted and published in Canada.

4. Notice.—In every case of interim registration under this Act, the author or his legal representative shall cause notice of such registration to be inserted once in the "Canada Gazette," R. S., c. 62, s. 13.

16. Application for Registration.—The application for the registration of a copyright or of a temporary or of an interim copyright, may be made in the name of the author or of his legal representatives, by any person purporting to be the agent of such author or legal representatives;

2. **Unauthorized assumption of Agency.**—Any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any court of competent jurisdiction. R. S., c. 62, s. 14.

ASSIGNMENTS AND RENEWALS.

17. **Copyright and Right to Obtain it Assignable.**—In Duplicate.—The right of an author of a literary, scientific or artistic work, to obtain a copyright, and the copyright when obtained, shall be assignable in law, either as to the whole interest or any part thereof, by an instrument in writing, made in duplicate, and which shall be registered at the department on production of both duplicates and payment of the fee hereinafter mentioned:

2. **Duplicates, Disposal Of.**—One of the duplicates shall be retained at the department, and the other shall be returned, with a certificate of registration, to the person depositing it. R. S., c. 62, s. 15.

18. **Copyright to Assignee of Author.**—Whenever the author of a literary, scientific or artistic work or composition which may be the subject of copyright has executed the same for another person, or has sold the same to another person for due consideration, such author shall not be entitled to obtain or to retain the proprietorship of such copyright, which is, by the said transaction, virtually transferred to the purchaser,—and such purchaser may avail himself of such privilege, unless a reserve of the privilege is specially made by the author or artist in a deed duly executed. R. S., c. 62, s. 16.

19. **Extension of Term.**—**Title to be again Registered.**—If, at the expiration of the said term of twenty-eight years, the author, or any of the authors (when the work has been originally composed and made by more than one person), is still living, or if such author is dead and has left a widow or a child, or children living, the same sole or exclusive right and liberty shall be continued to such author, or to such authors still living, or, if dead, then to such widow and child or children, as the case may be, for the further term of fourteen years; but in such case, within one year after the expiration of such term of twenty-eight years, the title of the work secured shall be a second time registered, and all other regulations herein required to be observed in regard to original copyrights shall be complied with in respects to such renewed copyright. R. S., c. 62, s. 17.

20. **Notice of Renewal to be Published.**—In all cases of renewal of copyright under this Act, the author or proprietor shall, within two months from the date of such renewal, cause notice of such registration thereof to be published once in the "Canada Gazette." R. S., c. 62, s. 18.

CONFLICTING CLAIMS TO COPYRIGHT.

21. **How Determined.**—**Court.**—In case of any person making application to register as his own, the copyright of a literary, scientific or artistic work already registered in the name of another person, or in case of simultaneous conflicting applications or of an application made by any person other than the person entered as proprietor of a registered copyright, to cancel the said copyright, the person so applying shall be

notified by the Minister that the question is one for the decision of a court of competent jurisdiction, and no further proceedings shall be had or taken by the Minister concerning the application until a judgment is pronounced maintaining, cancelling or otherwise deciding the matter:

2. Duty of Minister.—Such registration, cancellation, or adjustment of the said right shall then be made by the Minister in accordance with such decision.

3. Exchequer Court.—The Exchequer Court of Canada shall be a competent court within the meaning of this Act, and shall have jurisdiction to adjudicate upon any question arising under this section, upon information in the name of the Attorney General of Canada, or at the suit of any person interest. R. S., c. 62, s. 19, 53 V., c. 12, s. 1; 54-55 V., c. 34, s. 1,

UNAUTHORIZED PUBLICATION OF MANUSCRIPT.

22. Printing of Manuscript Without Authority.—Damages.—Every person who, without the consent of the author or lawful proprietor thereof first obtained, prints or publishes, or causes to be printed or published, any manuscript not previously printed in Canada or elsewhere, shall be liable to the author or proprietor for all damages occasioned by such publication, and the same shall be recoverable in any court of competent jurisdiction. R. S., c. 62, s. 20.

LICENSES TO REPUBLISH.

23. Copyrighted Work Out of Print.—License.—If a work copyrighted in Canada becomes out of print, a complaint may be lodged by any person with the Minister, who, on the fact being ascertained to his satisfaction, shall notify the owner of the copyright of the complaint and of the fact; and if, within a reasonable time no remedy is applied by such owner, the Minister may grant a license to any person to publish a new edition or to import the work, specifying the number of copies and the royalty to be paid on each to the owner of the copyright. R. S., c. 62, s. 21.

FEEES.

24. Registration Fees.—The following fees shall be paid to the Minister before an application for any of the purposes received, that is to say:

Registering a copyright	\$1 00
Registering an interim copyright	0 50
Registering a temporary copyright	0 50
Registering an assignment	1 00
A certified copy of registration	0 50
Registering any decision of a court of justice, for every folio	0 50

For Office Copies.—For office copies of documents not above mentioned, the following charges shall be made:

Every single or first folio, of one hundred words, certified copy	\$0 50
Every such subsequent hundred words, frac- tions of or under one-half not being counted, and of one-half or more being counted	0 25

2. Fees in full for all services.—The said fees shall be in full for all services performed under this Act by the Minister or by any person employed by him.

3. Application.—All fees received under this Act shall be paid over to the Minister of Finance and shall form part of the Consolidated Revenue Fund of Canada:

4. No EXEMPTION FROM PAYMENT OF FEES.—No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this Act for such person, and no fee paid shall be returned to the person who paid it. R. S., c. 62, s. 22.

RIGHT TO REPRESENT SCENE OR OBJECT.

25. Saved.—Nothing herein contained shall prejudice the right of any person to represent any scene or object notwithstanding that there may be copyright in some other representation of such scene or object. R. S., c. 62, s. 23.

FOREIGN NEWSPAPERS AND MAGAZINES.

26. May be Imported.—Newspapers and magazines published in foreign countries, and which contain, together with foreign original matter, portions of British copyright works republished with the consent of the author or his legal representatives, or under the law of the country where such copyright exists, may be imported into Canada. R. S., c. 62, s. 24.

CLERICAL ERRORS NOT TO INVALIDATE.

27. Corrected by Minister.—Clerical errors which occur in the framing or copying of any instrument drawn by any officer or employee in or of the department shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister. R. S., c. 62, s. 25.

IMPORTATION.

28. If Copyright Owner Licenses Reproduction in Canada.—Minister may prohibit Importation.—Proviso.—If a book as to which there is subsisting copyright under this Act has been first lawfully published in any part of His Majesty's dominions other than Canada, and if it is proved to the satisfaction of the Minister that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a license to reproduce in Canada, from movable or other types, or from stereotype plates, or from electro-plates, or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the Minister may, notwithstanding anything in this Act, by order under his hand, prohibit the importation into Canada except with the written consent of the licensee, of any copies for such books printed elsewhere: provided that two such copies may be specially imported for the *bona fide* use of any public free library or any university or college library, or for the library of any duly incorporated institution or society for the use of the members of such institution or society. 63-64 V., c. 25, s. 1.

29. Suspension or Revocation of Prohibition.—The Minister may at any time in like manner, by order under his hand, suspend or revoke such prohibition upon importation if it is proved to his satisfaction that—

(a) the license to reproduce in Canada has terminated or expired; or

(b) the reasonable demand for the book in Canada is not sufficiently met without importation; or

(c) the book is not, having regard to the demand therefor in Canada, being suitably printed or published; or—

(d) any other state of things exists on account of which it is not in the public interest to further prohibit importation. 63-64 V., c. 25, s. 2.

30. Licensee if required to Furnish copy of any addition.—At any time after the importation of a book has been so prohibited, any person resident or being in Canada may apply, either directly or through a bookseller or other agent, to the person so licensed to reproduce such book, for a copy of any edition of such book then on sale and reasonably obtainable in the United Kingdom or any other part of His Majesty's dominions, and it shall thereupon be the duty of the person so licensed as soon as reasonably may be to import and sell such copy to the person so applying therefor at the ordinary selling price of such copy in the United Kingdom, or such other part of His Majesty's dominions, with the duty and reasonable forwarding charges added:

2. Otherwise Prohibition May be Revoked.—The failure or neglect, without lawful excuse, of the person so licensed to supply such copy within a reasonable time, shall be a reason for which the Minister may, if he sees fit, suspend or revoke the prohibition upon importation. 63-64 V., c. 25, s. 3.

31. Prohibition to be Notified to Customs.—The Minister shall forthwith inform the Department of Customs of any order made by him under this Act. 63-64 V., c. 25, s. 4.

EVIDENCE.

32. Certified Copies.—All copies or extracts certified from the department, shall be received in evidence, without further proof and without production of the originals. R. S., c. 62, s. 26.

33. Validity of Documents.—All documents, executed and accepted by the Minister, shall be held valid, so far as relates to official proceedings under this Act. R. S., c. 62, s. 27.

RULES AND REGULATIONS.

34. Minister to Make Rules and Forms.—The Minister may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as appear to him necessary and expedient for the purposes of this Act; and such regulations and forms, circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act. R. S., c. 62, s. 27.

OFFENCES AND PENALTIES.

35. Making False Entries.—Indictable Offence.—Every person who wilfully makes or causes to be made any false entry in any of the registry books hereinbefore mentioned or who wilfully

produces or causes to be tendered in evidence, any paper which falsely purports to be a copy of an entry in any of the said books, is guilty of an indictable offence and shall be punished accordingly. R. S., c. 62, s. 28.

36. Fraudulent Assumption of Authority.—Every person who fraudulently assumes authority to act as agent of the author or of his legal representative for the registration of a copyright or of a temporary or of an interim copyright, is guilty of an indictable offence and shall be punished accordingly. R. S. c. 62, s. 29.

37. Infringement of Copyright of a Book.—Every person who;

(a.) After the interim registration of the title of any book according to this Act, and within the term herein limited, or after the copyright is secured and during the term or terms of its duration, prints, publishes, or reprints or republishes, or imports, or causes to be so printed, published or imported, any copy or any translation of such book without having first obtained the right so to do by assignment from the person lawfully entitled to the copyright thereof;

(b.) Knowing the same to be so printed or imported, publishes, sells or exposes for sale, or causes to be published, sold or exposed for sale, any copy of such book without such consent.

Forfeiture.—Recovery.—Shall forfeit every copy of such book to the person then lawfully entitled to the copyright thereof; and shall forfeit and pay for every such copy which is found in his possession, either printed or being printed, published, imported or exposed for sale, contrary to the provisions of this Act, such sum, not exceeding one dollar and not less than ten cents, as the court determines, which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction;

2. Application.—A moiety of such sum shall belong to His Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. R. S., c. 62, s. 30.

38. Infringement of Copyright of Painting, Etc.—Forfeiture.—Every person who, after the registering of any painting, drawing, statue or other work of art, and within the term or terms limited by this Act, reproduces in any manner, or causes to be reproduced, made or sold, in whole or in part, any copy of any such work of art, without the consent of the proprietor, shall forfeit the plate or plates on which such reproduction has been made, and every sheet thereof, so reproduced, to the proprietor of the copyright thereof; and shall also forfeit for every sheet of such reproduction published or exposed for sale, contrary to this Act, such sum, not exceeding one dollar and not less than ten cents as the court determines, which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction.

2. Application.—A moiety of such sum shall belong to His Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. R. S., c. 62, s. 31.

39. Infringement of Copyright, of Print, Chart, Music, Etc.—Every person who, without the consent of the proprietor of the copyright first obtained,

(a.) After the registering of any print, cut or engraving, map, chart, musical composition, or photograph, according to the provisions of this Act, and within the term or terms limited by this Act,

engraves, etches, or works, sells or copies, or causes to be engraved, etched or copied, made or sold, any such print, cut or engraving, map, chart, musical composition or photograph or any part thereof, either as a whole or by varying, adding to or diminishing the main design, with intent to evade the law, or,

(b.) Prints or reprints or imports for sale, or causes to be so printed or reprinted or imported for sale, any such map, chart, musical composition, print, cut or engraving, or any part thereof, or,

(c.) Knowing the same to be so reprinted, printed or imported without such consent, publishes, sells, or exposes for sale, or in any manner disposes of any such map, chart, musical composition, engraving, cut, photograph or print;

Forfeiture.—Shall forfeit the plate or plates on which such map, chart, musical composition, engraving, cut, photograph or print has been copied, and also every sheet thereof so copied or printed as aforesaid, to the proprietor of the copyright thereof; and shall also forfeit, for every sheet of such map, musical composition, print, cut or engraving found in his possession, printed or published or exposed for sale contrary to this Act, such sum, not exceeding one dollar and not less than ten cents, as the court determines, which forfeiture shall be enforceable or recoverable in any court of competent jurisdiction;

2. **Application.**—A moiety of such sum shall belong to His Majesty for the public uses of Canada, and the other moiety shall belong to the lawful owner of such copyright. R. S., c. 62, s. 32.

40. Falsely Pretending to Have Copyright.—Penalty.—Every person who has not lawfully acquired the copyright of a literary, scientific or artistic work, and who inserts in any copy thereof printed, produced, reproduced or imported, or who impresses on any such copy, that the same has been entered according to this Act, or words purporting to assert the existence of a Canadian copyright in relation thereto, shall incur a penalty not exceeding three hundred dollars. R. S., c. 62, s. 33.

41. Registering Interim Copyright Without Publishing.—Penalty.—Every person who causes any work to be registered in the register of interim copyright and fails to print and publish or reprint and republish the same within the time prescribed, shall incur a penalty not exceeding one hundred dollars. R. S., c. 62, s. 33.

42. Procedure.—Every penalty incurred under either of the last two preceding sections shall be recoverable in any court of competent jurisdiction;

2. **Application.**—A moiety of any such penalty shall belong to His Majesty for the public uses of Canada, and the other moiety shall belong to the person who sues for the same. R. S., c. 62, s. 33.

43. Unlawful Importation of Books.—Forfeiture.—Penalty.—All books imported in contravention of any order prohibiting such importation made under the hand of the minister by the authority of this Act may be seized by any officer of Customs, and shall be forfeited to the Crown and destroyed; and any person importing, or causing or permitting the importation, of any book in contravention of this Act shall, for each offence, be liable, upon summary conviction, to a penalty not exceeding one hundred dollars. 63-64 V., c. 25, s. 5.

44. Limitation of Actions.—No action or prosecution for the recovery of any penalty under this Act, shall be commenced more than two years after the cause of action arises. R. S., c. 62, s. 34.

PART II.

APPLICATION.

45. When to Come Into Force.—This part shall come into force on a day to be named by proclamation of the Governor General. 52 V., c. 29, s. 7.

46. Works Excepted.—Nothing in this part contained shall be deemed to,—

(a.) Prohibit the importation from the United Kingdom of copies of works of which the copyright is there existing and which are lawfully printed and published there; or,

(b.) Except as in this Part otherwise expressly provided, apply to any work for which, before the coming into force of this Part, copyright had been obtained in the United Kingdom, or in any country which has an international copyright treaty with the United Kingdom, in which Canada is included.

2. Subject to Former Law.—The law in force at the time of the coming into effect of this Part shall be deemed to continue in force as respects such works. 52 V., c. 29, s. 6.

REPEAL.

47. Sections 4, 5, 6 and 8.—Sections four, five, six and eight of Part I, of this Act are repealed. 52 V., c. 29, ss. 1 and 2.

SUBJECTS AND CONDITIONS OF COPYRIGHT.

48. Who may have Copyright.—For Twenty-eight Years.—Translations.—Any person domiciled in Canada or in any part of the British possessions, or any citizen of any country which has an international copyright treaty with the United Kingdom, in which Canada is included, who is the author of any book, map, chart or musical or literary composition, or of any original painting, drawing, statue, sculpture or photograph, or who invents, designs, etches, engraves or causes to be engraved, etched or made from his own design, any print or engraving, and the legal representatives of such person or citizen, shall, for the term of twenty-eight years from the time of recording the copyright thereof, have the sole and exclusive right and liberty of printing, reprinting, publishing, reproducing and vending such literary, scientific, musical or artistic work or composition, in whole or in part, and of allowing translations of such literary work, from one language into other languages, to be printed or reprinted and sold in the manner and on the conditions, and subject to the restrictions hereinafter set forth. 52 V., c. 29, s. 1.

49. Conditions for Obtaining Copyright.—The conditions for obtaining such copyright shall be that the said literary, scientific, musical or artistic work shall, before publication or production elsewhere, or simultaneously with the first publication or production thereof elsewhere, be registered in the office of the Minister, by the author or his legal representative, and further that such work shall be printed and published or produced in Canada, or reprinted and republished or reproduced in Canada, within one month after publication or production elsewhere. 52 V., c. 29, s. 1.

50. Duration.—In no case shall the sole and exclusive right and privilege in Canada continue to exist after it has expired in the country of origin. 52 V., c. 29, s. 1.

LICENSES.

51. Minister May Grant Licenses to Print and Publish in Canada.—No Exclusive Right.—If any person entitled to copyright of a work under this Act,—

(a.) Neglects or fails to take advantage of its provisions; or,
 (b.) Having obtained copyright thereunder, at any time after the first publication in Canada of the work for which copyright has been so obtained, fails to print and publish the work in Canada in sufficient numbers and in such manner as to meet the demand in Canada for such work;
 the Minister may grant a license or licenses to any person or persons domiciled in Canada to print and publish or to reproduce such work in Canada, but no such license shall convey any exclusive right to print and publish or reproduce any work.

2. **Royalty of 10 p. c.**—A license shall be granted to any applicant agreeing to pay the author or his legal representatives a royalty of ten per centum on the retail price of each copy or reproduction issued of the work which is the subject of the license, and giving security for such payment to the satisfaction of the Minister. 52 V., c. 29, s. 3; 58-59 V., c. 37, s. 3.

52. Governor in Council May Revoke Such Licenses.—As to any work for which copyright has been obtained in Canada, the Governor in Council may, upon its being established to his satisfaction that the holder of such copyright is prepared and *bona fide* intends, during the remaining period of his term of copyright, to print and publish such work in Canada in sufficient numbers and in such manner as to supply the demand for such work in Canada, revoke all licenses for the printing and publication of such work then in force.

2. **Saving.**—Such revocation shall not render unlawful the subsequent sale and disposal in Canada of all or any of the copies of such work then printed under the authority of the license so revoked. 58-59 V., c. 37, s. 5.

53. How Royalty Collected and Paid.—The royalty in this Part provided for shall be collected by the officers of the Department of Inland Revenue, and paid over to the persons entitled thereto, under regulations approved by the Governor in Council; but the Government shall not be liable to account for any such royalty not actually collected. 52 V., c. 29, s. 4.

54. Governor in Council May Prohibit Importation.—Whenever, under the foregoing provisions of this Part, a license has been issued permitting the printing and publishing or the producing of any work, and evidence has been adduced to the satisfaction of the Governor in Council that such work is in course of being printed and published or produced in such manner as to meet the demand therefor in Canada, the Governor General may, by proclamation published in the "Canada Gazette," prohibit the importation, while the author's copyright or that of his assigns is in force, or would have been in force had copyright for the work been obtained in Canada under the foregoing provisions of this Part, of any copies or reproductions of the work to which such license relates.

2. **And Revoke Prohibition.**—If, at any time thereafter, it is made to appear to the Governor in Council that such work is not, under such license, printed and published or produced in such manner as to meet such demand, the Governor General may, by proclamation published as aforesaid, revoke such prohibition. 52 V., c. 29, s. 5; 58-59 V., c. 37, s. 4.

RULES AND FORMS

OF THE

DEPARTMENT OF AGRICULTURE

UNDER

THE COPYRIGHT ACT

Approved by the Governor in Council, on the 3rd day of December, 1907

RULES.

I.

There is no necessity for any personal appearance at the Department of Agriculture, unless specially called for by order of the Minister or the Deputy, every transaction being carried on by writing.

II.

In every case the applicant or depositor of any paper is responsible for the merits of his allegations and for the validity of instruments furnished by him or his agent.

III.

The correspondence is carried on with the applicant or his agent, but with one person only, and will be conveyed through the Canadian mails free of charge.

IV.

All papers are to be clearly and neatly written on foolscap paper, and every word of them is to be distinctly legible.

All copies of books deposited shall be bound in boards, and all copies of maps and photographs shall be mounted.

V.

An application for registration shall be signed by the applicant or by an agent duly authorized.

A partner may sign for a firm. A director or secretary or other principal officer of a company may sign for the company.

VI.

All communications to be addressed in the following words:
"To the Minister of Agriculture (Trade Mark and Copyright Branch),
Ottawa.

VII.

As regards proceedings not specially provided for in the following forms, any form being conformable to the letter and spirit of the law will be accepted, and if not conformable will be returned for correction.

VIII.

A copy of the Act and the Rules with a particular section marked, sent to any person making an inquiry is intended as a respectful answer by the office.

IX.

Information as to subsisting registrations will not be furnished by the office the registers and indexes being open for inspection free of charge.

FORMS.

FORM A

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Copyright. (Except copyright of Original Artistic Work.)

(By the Proprietor.)

I, _____ of the _____
 of _____ in the _____ of
 hereby declare that I am lawfully entitled to the Copyright of the
 (1) _____ entitled "_____" and that
 the said (1) _____ has been printed in Canada; and I
 hereby request you to register the Copyright of the said (1)
 _____ in my name in accordance with the provisions of
 the Copyright Act.

I herewith forward three copies of the said (1)

Signed at _____ the _____ day of
 19 _____, in the presence of the two undersigned witnesses.

Witnesses:

}

To the Minister of Agriculture,
 Ottawa.

CANADIAN COPYRIGHT FORMS.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Copyright. (Except Copyright of original artistic work.)

(By the Agent of the Proprietor.)

I. _____ of the _____
 of _____ in the _____ of _____
 hereby declare that I am the duly authorized agent of _____
 of the _____ of _____ in the _____
 of _____
 that the said _____ is lawfully entitled to the Copyright of
 the (1) _____ entitled " _____ " and that
 the said (1) _____ has been printed in Canada and I
 hereby request you to register the Copyright of the said (1) _____
 in the name of the said _____ in
 accordance with the provisions of the Copyright Act.
 I herewith forward three copies of the said (1) _____
 Signed at _____ the _____ day of
 19 _____, in the presence of the two undersigned witnesses,
 Witnesses:

To the Minister of Agriculture,
 Ottawa.

(1. Book, map, chart, musical composition, photograph, print, cut or engraving.

FORM B.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Copyright of Original Artistic work.

(By the Proprietor)

I. _____ of the _____
 of _____ in the _____ of _____
 hereby declare that I am lawfully entitled to the Copyright of the
 (1) _____ entitled _____ that the said (1) _____
 has been produced in Canada and I hereby
 request you to register the Copyright of the said (1) _____
 in accordance with the terms of the Copyright Act in my name.
 The following is a description of the said (1) _____
 Signed at _____ this _____ day of
 19 _____, in the presence of the two undersigned witnesses
 Witnesses:

To the Minister of Agriculture,
 Ottawa.

(1) Original painting, drawing, statue or sculpture.

FORM B1.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Copyright of original artistic work.

(By the Agent of the Proprietor.)

I of the
 of in the of
 hereby declare that I am the duly authorized agent of
 of the of in the
 of that the said is lawfully
 entitled to the Copyright of the (1) entitled "
 " and that the said (1) has been
 produced in Canada and I hereby request you to register the Copy-
 right of the said (1) in the name of the said
 in accordance with the provisions of the Copy-
 right Act.

The following is a description of the said (1)

Signed at the day of
 19 , in the presence of the two undersigned witnesses.

Witnesses:

}

To the Minister of Agriculture,
 Ottawa.

(1) Original painting, drawing, statue on sculpture.

FORM C.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Interim Copyright.

(By the Proprietor)

I, of the
 of in the of
 hereby declare that I am lawfully entitled to the Copyright of the
 (1) entitled and I hereby request you
 to register the Interim Copyright of the said (1)
 under the Copyright Act in my name
 A copy of the title or a designation of the said (1) is
 hereunto annexed.

Signed at the day of
 19 , in the presence of the two undersigned witnesses.

Witnesses:

}

To the Minister of Agriculture,
 Ottawa.

(1) Literary, scientific or artistic work.

FORM C1.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Interim Copyright.

(By the Agent of the Proprietor.)

I, _____ of the _____
 of _____ in the _____ of _____
 hereby declare that I am the duly authorized agent of
 of the _____ of _____ in the _____
 of _____ that the said _____ is
 lawfully entitled to the Copyright of the (1)
 entitled " _____ " and I hereby request you to register
 the Interim Copyright of the said (1) _____ under the
 Copyright Act in the name of the said _____
 A copy of the title or a designation of the said (1)
 is hereunto annexed.

Signed at _____ the _____ day of
 19 _____, in the presence of the two undersigned witnesses.
 Witnesses:

}

To the Minister of Agriculture,
 Ottawa.

(1) Literary, scientific or artistic work.

FORM D.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Temporary Copyright.

(By the Proprietor)

I, _____ of the _____
 of _____ in the _____ of _____
 hereby declare that I am lawfully entitled to the Copyright of the
 literary work entitled " _____ " which is being preliminarily
 published in separate articles in a newspaper or periodical and I
 hereby request you to register the Temporary Copyright of the said
 literary work under the Copyright Act in my name.

A copy of the title of the said literary work and a short analy-
 sis thereof are hereunto annexed.

Signed at _____ the _____ day of
 19 _____, in the presence of the two undersigned witnesses.
 Witnesses:

t

}

To the Minister of Agriculture,
 Ottawa.

FORM D1.

DOMINION OF CANADA.

The Copyright Act.

Application for registration of Temporary Copyright.

(By the Agent of the Proprietor.)

I, _____ of the _____
 of _____ in the _____ of
 hereby declare that I am the duly authorized agent of
 of the _____ of _____ in _____
 of _____ that the said _____ is
 lawfully entitled to the Copyright of the literary work entitled "

"which is being preliminarily published in separate
 articles in a newspaper or periodical and I hereby request you to
 register the Temporary Copyright of the said literary work under
 the Copyright Act in the name of the said _____

A copy of the title of the said literary work and a short analy-
 sis thereof are hereunto annexed.

Signed at _____ the _____ day of
 19 _____, in the presence of the two undersigned witnesses.

Witnesses:

}

To the Minister of Agriculture,
 Ottawa.

PATENTS OF INVENTIONS

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REVISED STATUTES OF CANADA, 1906.

CHAPTER 69.

AN ACT RESPECTING PATENTS OF INVENTION.

SHORT TITLE.

1. Short title.—This Act may be cited as the Patent Act. R.S., c. 61, s. 1.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) 'Minister' means the Minister of Agriculture;
- (b) 'Commissioner' means the Commissioner of Patents, and 'Deputy Commissioner' means the Deputy Commissioner of Patents;
- (c) 'invention' means any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine, manufacture or composition of matter;
- (d) 'legal representatives' includes heirs, executors, administrators and assigns or other legal representatives. R.S., c. 61, s. 2.

PATENT OFFICE AND APPOINTMENT OF OFFICERS.

3. Patent office constituted.—There shall be attached to the Department of Agriculture, as a branch thereof, an office which shall be called the Patent Office; and the Minister of Agriculture for the time being shall be the Commissioner of Patents. R.S., c. 61, s. 3.

4. Duties of Commissioner.—The Commissioner shall receive all applications, fees, papers, documents and models for patents, and shall perform and do all acts and things requisite for the granting and issuing of patents of invention; and he shall have the charge and custody of the books, records, papers, models, machines and other things belonging to the Patent Office. R.S., c. 61, s. 4.

5. Deputy and officers.—The Deputy Minister of Agriculture shall be the Deputy Commissioner, and the Governor in Council may, from time to time, appoint such officers and clerks under the Deputy Commissioner as are necessary for the purposes of this Act, and such officers and clerks shall hold office during pleasure.

2. Powers and duties of Deputy.—The Deputy Commissioner may do any act or thing, whether judicial or ministerial, which the Commissioner of Patents is authorized or empowered to do by any provision of this Act; and, in the absence of the Deputy Commissioner, any person performing the duties of the Deputy Minister of Agriculture under the authority of the Civil Service Act may, as acting deputy commissioner, do any such act or thing. 60-61 V., c. 25, s. 1; 3 E. VII., c. 46, s. 1.

6. Seal.—The Commissioner shall cause a seal to be made for the purposes of this Act, and may cause to be sealed therewith every patent and other instrument and copy thereof issuing from the Patent Office. R.S., c. 61, s. 6.

APPLICATIONS FOR PATENTS.

7. Who may obtain patents.—Any person who has invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvement in any art, machine manufacture or composition of matter, which was not known or used by any other person before his invention thereof, and which has not been in public use or on sale with the consent or allowance of the inventor thereof, for more than one year previously to his application for patent therefor in Canada, may, on a petition to that effect, presented to the Commissioner, and on compliance with the other requirements of this Act, obtain a patent granting to such person an exclusive property in such invention.

2. What may not be patented.—No patent shall issue for an invention which has an illicit object in view, or for any mere scientific principle or abstract theorem. R.S., c. 61, s. 7.

8. As to inventions for which foreign patents have been taken out.—Any inventor who elects to obtain a patent for his invention in a foreign country before obtaining a patent for the same invention in Canada, may obtain a patent in Canada, if the patent is applied for within one year from the date of the issue of the first foreign patent for such invention.

2. Manufacture in Canada.—If within three months after the date of the issue of a foreign patent, the inventor gives notice to the Commissioner of his intention to apply for a patent in Canada for such invention, then no other person having commenced to manufacture the same device in Canada during such period of one year, shall be entitled to continue the manufacture of the same after the inventor has obtained a patent therefor in Canada, without the consent or allowance of the inventor.

3. Expiry of Canadian patent.—No Canadian patent issued previous to the thirteenth day of August, one thousand nine hundred and three, shall be deemed to have expired before the end of the term for which it was granted merely because of the expiry of a foreign patent for the same invention. 55-56 V., c. 24, s. 1; 5 E. VII., c. 46, s. 2.

9. Improvements may be patented.—Any person who has invented any improvement on any patented invention, may obtain a patent for such improvement; but he shall not thereby obtain the right of vending or using the original invention, nor shall the patent for the original invention confer the right of vending or using the patented improvement. R.S., c. 61, s. 9.

10. Oath of inventor to be made before obtaining patent.—Every inventor shall, before a patent can be obtained, make oath, or, when entitled by law to make an affirmation instead of an oath, shall make an affirmation, that he verily believes that he is the inventor of the invention for which the patent is asked, and that the several allegations in the petition contained are respectively true and correct.

2. Or of the applicant if the inventor is dead.—In the event of the inventor being dead, such oath or affirmation shall be made by the applicant, and shall state that he verily believes that the person whose assignee or legal representative he is, was the inventor of the invention for which the patent is solicited, and that the sever-

al allegations in the petition contained are respectively true and correct.

3. Before whom oath may be made.—Such oath or affirmation may be made before a minister plenipotentiary, *chargé d'affaires*, consul, vice-consul or consular agent, a judge of any court, a notary public, a justice of the peace, or the mayor of any city, borough or town, or a commissioner for taking affidavits having authority or jurisdiction within the place where the oath may be administered. R.S., c. 61, s. 10; 55-56 V., c. 24, s. 2.

11. Election of domicile.—The applicant for a patent shall, for the purposes of this Act, elect his domicile at some known and specified place in Canada, and shall mention the same in his petition for a patent. R.S., c. 61, s. 11.

12. Particulars required on application.—The applicant shall, in his petition for a patent, insert the title or name of the invention, and shall, with the petition, send in a specification in duplicate of the invention and an additional or third copy of the claim or claims. 56 V., c. 24, s. 1.

13. What the specification shall show.—The specification shall correctly and fully describe the mode or modes of operating the invention, as contemplated by the inventor; and shall state clearly and distinctly the contrivances and things which he claims as new and for the use of which he claims an exclusive property and privilege.

2. Place and date.—Such specification shall bear the name of the place where, and the date when it is made, and shall be signed by the inventor, if he is alive, and if not, by the applicant, and by two witnesses to such signature of the inventor or applicant.

3. In the case of a machine.—In the case of a machine the specification shall fully explain the principle and the several modes in which it is intended to apply and work out the same.

4. Drawings to be furnished in certain cases.—In the case of a machine, or in any other case in which the invention admits of illustration by means of drawings, the applicant shall also, with its application, send in drawings in duplicate, showing clearly all parts of the invention; and each drawing shall bear the signature of the inventor if he is alive, and, if not, of the applicant, or of the attorney of such inventor or applicant, and shall have written references corresponding with the specification; but the Commissioner may require further drawings or dispense with any of them, as he sees fit.

5. Drawings how disposed of.—One duplicate of the specification and of the drawings, if there are drawings, shall be annexed to the patent, of which it shall form an essential part, and the other duplicate shall remain deposited in the Patent Office.

6. Certain matters may be dispensed with.—The Commissioner may, in his discretion, dispense with the duplicate specification and drawing, and in lieu thereof cause copies of the specification and drawing, in print or otherwise, to be attached to the patent, of which they shall form an essential part. R.S., c. 61, s. 13.

14. Model to be furnished when required, or specimens.—In all cases in which the invention admits of representation by model, the applicant, if required by the Commissioner, shall furnish a model of convenient size exhibiting its several parts in due pro-

portion; and when the invention is a composition of matter, the applicant, if required by the Commissioner, shall furnish specimens of the ingredients, and of the composition sufficient in quantity for the purpose of experiment.

2. Precautions in cases of dangerous substances.—If such ingredients or composition be of an explosive or dangerous character, they shall be furnished with such precautions as are prescribed in the requisition therefor. 55-56 V., c. 24, s. 3.

15. Examination of applications for patents.—On each application for a patent, a thorough and reliable examination shall be made by competent examiners to be employed in the Patent Office for that purpose. 55-56 V., c. 24, s. 8.

16. Withdrawal of applications for patents.—No application for a patent shall be withdrawn without the consent in writing of each and every registered assignee of such patent or any part thereof. 55-56 V., c. 24, s. 4.

REFUSAL TO GRANT PATENTS.

17. Commissioner may object to grant a patent in certain cases.—The Commissioner may object to grant a patent in any of the following cases:—

(a) When he is of opinion that the alleged invention is not patentable in law;

(b) When it appears to him that the invention is already in the possession of the public, with the consent or allowance of the inventor;

(c) When it appears to him that there is no novelty in the invention;

(d) When it appears to him that the invention has been described in a book or other printed publication before the date of the application, or is otherwise in the possession of the public;

(e) When it appears to him that the invention has already been patented in Canada, unless the Commissioner has doubts as to whether the patentee or the applicant is the first inventor;

(f) When it appears to him that the invention has already been patented in a foreign country, and the year has not expired within which the foreign patentee may apply for a patent in Canada, unless the Commissioner has doubts as to whether the foreign patentee or the applicant is the first inventor. R.S., c. 61, s. 16.

18. Applicant to be notified.—Whenever the Commissioner objects to grant a patent as aforesaid, he shall notify the applicant to that effect and shall state the ground or reason therefor, with sufficient detail to enable the applicant to answer, if he can, the objection of the Commissioner. R.S., c. 61, s. 17.

19. Appeal to Governor in Council.—Every applicant who has failed to obtain a patent by reason of the objection of the Commissioner, as aforesaid may, at any time within six months after notice thereof has been mailed, addressed to him or his agent, appeal from the decision of the Commissioner to the Governor in Council. R.S., c. 61, s. 18.

CONFLICTING APPLICATIONS.

20. Arbitration in case of conflicting applications.—In case of conflicting applications for any patent, the same shall be

submitted to the arbitration of three skilled persons, two of whom shall be chosen by the applicants, one by each, and the third of whom shall be chosen by the Commissioner; and the decision or award of such arbitrators, or of any two of them, delivered to the Commissioner in writing, and subscribed by them or any two of them, shall be final, as far as concerns the granting of the patent.

2. Failure to appoint arbitrator.—If either of the applicants refuses or fails to choose an arbitrator, when required so to do by the Commissioner, and if there are only two such applicants, the patent shall issue to the other applicant.

3. In certain cases, commissioner may appoint.—If there are more than two conflicting applications, and if the persons applying do not all unite in appointing three arbitrators, the Commissioner may appoint the three arbitrators for the purposes aforesaid.

4. Arbitrators to be sworn.—The arbitrators so named shall subscribe and take before a judge of any court of record in Canada, an oath in the form following, that is to say:—

Form of oath.—‘I, the undersigned (A.B.), being duly appointed an arbitrator under the authority of the Patent Act, do hereby solemnly swear or (affirm, *as the case may be*), that I will well and truly perform the duty of such arbitrator on the conflicting applications of (C. D. and E. F.) submitted to me.

5. Powers of arbitrators.—The arbitrators, or any one of them, when so sworn, may summon before them any applicant or other person, and may require him to give evidence on oath, orally or in writing (*or on solemn affirmation, if such applicant or person is entitled to affirm in civil cases*), and to produce such documents and things as such arbitrators, deem requisite to the full investigation of the matters into which they are appointed to examine, and they shall have the same power to enforce the attendance of such applicants and other persons, and to compel them to give evidence, as is vested in any court of justice in civil cases, in the province in which the arbitration is held.

6. Their remuneration.—The fees for the services of such arbitrators shall be a matter of agreement between the arbitrators and the applicants, and shall be paid by the applicants who name them, respectively, except those of the arbitrator or arbitrators named by the Commissioner, which shall be paid by the applicants jointly. R.S., c. 61, s. 19.

GRANT AND DURATION OF PATENTS.

21. What the patent shall contain and confer.—Every patent granted under this Act shall contain the title or name of the invention, with a reference to the specification, and shall grant to the patentee and his legal representatives, for the term therein mentioned, from the granting of the same, the exclusive right, privilege and liberty of making, constructing and using, and vending to others to be used, the said invention, subject to adjudication in respect thereof before any court of competent jurisdiction.

2. Joint applications.—In cases of joint applications, the patents shall be granted in the names of all the applicants. R.S., c. 61, s. 20.

22. Form of issue.—Every patent shall be issued under the seal of the Patent Office and the signature of the Commissioner or

of the Deputy Commissioner, and, when duly registered, shall be good, and shall avail the grantee and his legal representatives for the term mentioned in the patent.

2. Patent may be referred to Minister of Justice.—The Commissioner may require that any patent, before it is signed by the Commissioner or by any other member of the King's Privy Council for Canada, acting for him, and before the seal hereinbefore mentioned is affixed to it, shall be examined by the Minister of Justice; and, if such examination is so required, the Minister of Justice shall, accordingly, examine it, and if he finds it conformable to law, he shall certify accordingly, and such patent may then be signed, and the seal affixed thereto. R.S., c. 61, s. 21; 56 V., c. 34, s. 2.

23. Duration of patent.—The term limited for the duration of every patent of invention issued by the Patent Office shall be eighteen years; but, at the time of the application therefor, it shall be at the option of the applicant to pay the full fee required for the term of eighteen years, or the partial fee required for the term of six years, or the partial fee required for the term of twelve years.

2. If partial fee only is paid.—If a partial fee only is paid, the proportion of the fee shall be stated in the patent, and the patent shall, notwithstanding anything therein or in this Act contained, cease at the end of the term for which the partial fee has been paid, unless before the expiration of the said term the holder of the patent pays the fee required for the further term of six or twelve years, and obtains from the Patent Office a certificate of such payment in the form which is, from time to time, adopted, which certificate shall be attached to and refer to the patent, and shall be under the signature of the Commissioner or of the Deputy Commissioner.

3. Effect of second and of further payment.—If such second payment, together with the first payment makes up only the fee required for twelve years, then the patent shall, notwithstanding anything therein or in this Act contained, cease at the end of the term of twelve years, unless at or before the expiration of such term the holder thereof pays the further fee required for the remaining six years, making up the full term of eighteen years, and obtains a like certificate in respect thereof. 55-56 V., c. 24, s. 5; 56 V., c. 34, s. 3.

RE-ISSUE OF PATENTS.

24. In certain cases new patent or amended specification may be issued.—Whenever any patent is deemed defective or inoperative by reason of insufficient description or specification, or by reason of the patentee claiming more than he had a right to claim as new, but at the same time it appears that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, the Commissioner may, upon the surrender of such patent and the payment of the further fee hereinafter provided, cause a new patent, in accordance with an amended description and specification made by such patentee, to be issued to him for the same invention, for any part or for the whole of the then unexpired residue of the term for which the original patent was, or might have been granted.

2. **Death or assignment.**—In the event of the death of the original patentee or of his having assigned the patent, a like right shall vest in his assignee or his legal representatives.

3. **Effect of new patent.**—Such new patent, and the amended description and specification, shall have the same effect in law, on the trial of any action thereafter commenced for any cause subsequently accruing, as if the same had been originally filed in such corrected form before the issue of the original patent.

4. **Separate patents for separate parts of invention.**—The Commissioner may entertain separate applications, and cause patents to be issued for distinct and separate parts of the invention patented, upon payment of the fee for a re-issue for each of such re-issued patents. R.S., c. 61, s. 23.

DISCLAIMERS.

25. **Patentee may disclaim any thing included in patent by mistake.**—Whenever, by any mistake, accident or inadvertence, and without any wilful intent to defraud or mislead the public, a patentee has,—

(a) made his specification too broad, claiming more than that of which he or the person through whom he claims was the first inventor; or,

(b) in the specification, claimed that he or the person through whom he claims was the first inventor of any material or substantial part of the invention patented, of which he was not the first inventor, and to which he had no lawful right; the patentee may, on payment of the fee hereinafter provided, make disclaimer of such parts as he does not claim to hold by virtue of the patent or the assignment thereof.

2. **Form and attestation of disclaimer.**—Such disclaimer shall be in writing, and in duplicate, and shall be attested in the manner hereinbefore prescribed, in respect of an application for a patent; one copy thereof shall be filed and recorded in the office of the Commissioner, and the other copy thereof shall be attached to the patent and made a part thereof by reference, and such disclaimer shall thereafter be taken and considered as part of the original specification.

3. **Not to affect pending suits.**—Such disclaimer shall not affect any action pending at the time of its being made, except in so far as relates to the question of unreasonable neglect or delay in making it.

4. **In case of death of patentee.**—In case of the death of the original patentee, or of his having assigned the patent, a like right shall vest in his legal representatives, any of whom may make disclaimer.

5. **Effect of disclaimer.**—The patent shall thereafter be deemed good and valid for so much of the invention as is truly the invention of the disclaimant, and is not disclaimed, if it is a material and substantial part of the invention, and is definitely distinguished from other parts claimed without right; and the disclaimant shall be entitled to maintain an action or suit in respect of such part accordingly. R. S., c. 61, s. 24.

ASSIGNMENTS.

26. When representatives may obtain the patent.—The patent may be granted to any person to whom the inventor, entitled under this Act to obtain a patent, has assigned or bequeathed the right of obtaining the same, or in default of such assignment or bequest, to the legal representatives of the deceased inventor. R.S., c. 61, s. 25.

27. Patents to be assignable.—Registration.—Assignment null if not registered.—Every patent issued for an invention shall be assignable in law, either as to the whole interest or as to any part thereof, by any instrument in writing; but such assignment, and every grant and conveyance of any exclusive right to make and use and to grant to others the right to make and use the invention patented within and throughout Canada or any part thereof, shall be registered in the Patent Office in the manner, from time to time, prescribed by the Commissioner for such registration; and every assignment affecting a patent for invention shall be null and void against any subsequent assignee, unless such instrument is registered as hereinbefore prescribed, before the registration of the instrument under which such subsequent assignee claims. R.S., c. 61, s. 26.

28. Assignment in cases of joint applications.—In cases of joint applications or grants, every assignment from one or more of the applicants or patentees to the other or others, or to any other person, shall be registered in like manner as other assignments. R.S., c. 61, s. 27.

IMPEACHMENT AND OTHER LEGAL PROCEEDINGS IN RESPECT OF PATENTS.

29. Patent to be void in certain cases, or valid only for parts.—Proviso.—A patent shall be void, if any material allegation in the petition or declaration of the applicant hereinbefore mentioned in respect of such patent is untrue, or if the specifications and drawings contain more or less than is necessary for obtaining the end for which they purport to be made, when such omission or addition is wilfully made for the purpose of misleading: Provided that if it appears to the court that such omission or addition was an involuntary error, and if it is proved that the patentee is entitled to the remainder of his patent *pro tanto* the court shall render a judgment in accordance with the facts, and shall determine as to costs, and the patent shall be held valid for such part of the invention described, as the patentee is so found entitled to.

2. Copies of judgment to be sent to patent office.—Two office copies of such judgment shall be furnished to the Patent Office by the patentee, one of which shall be registered and remain of record in the office, and the other of which shall be attached to the patent, and made a part of it by a reference thereto. R.S., c. 61, s. 28.

30. Remedy for infringement of patent.—Every person who, without the consent in writing of the patentee, makes; constructs or puts in practice any invention for which a patent has been obtained under this Act or any previous Act, or who procures such invention from any person not authorized by the patentee or his legal representatives to make or use it, and who uses it, shall be liable to the

patentee or his legal representatives in an action of damages for so doing; and the judgment shall be enforced, and the damages and costs that are adjudged shall be recoverable, in like manner as in other cases in the court in which the action is brought. R.S., c. 61, s. 29.

31. Action for infringement of patent.—Any action for the infringement of a patent may be brought in the court of record having jurisdiction, to the amount of the damages claimed, in the province in which the infringement is alleged to have taken place, which holds its sittings nearest to the place of residence or of business of the defendant; and such court shall decide the case and determine as to costs. R.S., c. 61, s. 30.

32. Injunction may issue.—In any action for the infringement of a patent, the court, or any judge thereof, may, on the application of the plaintiff, or defendant respectively, make such order as the court or judge sees fit,—

(a) restraining or for an injunction restraining the opposite party from further use, manufacture or sale of the subject-matter of the patent, and for his punishment in the event of disobedience of such order; or,

(b) for and respecting inspection or account; and,

(c) generally respecting the proceedings in the action.

2. Appeal.—An appeal shall lie from any such order under the same circumstances, and to the same court, as from other judgments or orders of the court in which the order is made. R.S., c. 61, s. 31.

33. Court may discriminate in certain cases.—Whenever the plaintiff, in any such action, fails to sustain the same, because his specification and claim embrace more than that of which he was the first inventor, and it appears that the defendant used or infringed any part of the invention justly and truly specified and claimed as new, the court may discriminate, and the judgment may be rendered accordingly. R.S., c. 61, s. 32.

34. Defence in action for infringement.—The defendant, in any such action, may plead as matter of defence, any fact or default which, by this Act, or by law, renders the patent void; and the court shall take cognizance of such pleading and of the facts connected therewith, and shall decide the case accordingly. R.S., c. 61, s. 33.

35. Proceedings for impeachment of patent.—Any person who desires to impeach any patent issued under this Act, may obtain a sealed and certified copy of the patent and of the petition, affidavit, specification and drawings thereunto relating, and may have the same filed in the office of the prothonotary or clerk of any of the divisions of the High Court of Justice in Ontario, or of the Superior Court of Quebec, or of the Supreme Court in Nova Scotia, New Brunswick, British Columbia or Prince Edward Island, respectively, or of the Court of King's Bench in Manitoba, or of the Supreme Court of the Northwest Territories in the provinces of Saskatchewan and Alberta respectively, pending the disestablishment of that Court, by the legislature of those provinces respectively, and thereafter of such superior court of justice as, in respect of civil jurisdiction, is established by the said legislatures respectively in lieu thereof, or of the Territorial Court in the Yukon Territory, according to the domicile elected by the patentee, as aforesaid, or in the

office of the registrar of the Exchequer Court of Canada, and such courts, respectively, shall adjudicate on the matter and decide as to costs; and if the domicile elected by the patentee is in that part of Canada formerly known as the district of Keewatin, the Court of King's Bench of Manitoba shall have jurisdiction until there is a superior court therein, after which, such superior court shall have jurisdiction.

2. "**Scire facias**" may issue.—The patent and documents aforesaid shall then be held as of record in such courts respectively, so that a writ of *scire facias*, under the seal of the court, grounded upon such record, may issue for the repeal of the patent, for cause as aforesaid, if, upon proceedings had upon the writ in accordance with the meaning of this Act, the patent is adjudged to be void. R. S., c. 61, s. 34; 53, V., c. 13, s. 1.

36. **Judgment voiding patent to be filed in Patent Office.**—A certificate of the judgment avoiding any patent shall, at the request of any person filing it to make it of record in the Patent Office, be entered on the margin of the enrolment of the patent in the Patent Office, and the patent shall thereupon be and be held to have been void and of no effect, unless the judgment is reversed on appeal as hereinafter provided. R. S., c. 61, s. 35.

37. **Appeal.**—The judgment declaring or refusing to declare any patent void shall be subject to appeal to any court having appellate jurisdiction in other cases decided by the court by which such judgment was rendered. R. S., c. 61, s. 36.

CONDITIONS AND EXTENSION.

38. **Patent conditional.**—Every patent shall, unless otherwise ordered by the Commissioner as hereinafter provided, be subject, and expressed to be subject, to the following conditions:—

(a) **Manufacture in Canada within two years.**—Such patent and all the rights and privileges thereby granted shall cease and determine, and the patent shall be null and void at the end of two years from the date thereof, unless the patentee or his legal representatives, within that period or an authorized extension thereof, commence, and after such commencement, continuously carry on in Canada, the construction or manufacture of the invention patented, in such a manner that any person desiring to use it may obtain it, or cause it to be made for him at a reasonable price, at some manufactory or establishment for making or constructing it in Canada;

(b) **Importation prohibited.**—If, after the expiration of twelve months from the granting of a patent, or an authorized extension of such period, the patentee or patentees, or any of them, or his or their or any of their legal representatives, for the whole or a part of his or their or any of their interest in the patent, import or cause to be imported into Canada, the invention for which the patent is granted, such patent shall be void as to the interest of the person or persons so importing or causing to be imported. 3 E. VII., c. 46, s. 4.

39. **Term for manufacture in Canada may be extended.**—Whenever a patentee is unable to commence or carry on the construction or manufacture of his invention within the two years hereinbefore provided, the Commissioner may, at any time not more than three months before the expiration of that term, grant to the

patentee or his legal representatives an extension of the term of two years, on his proving to the satisfaction of the Commissioner that his failure to commence or carry on such construction or manufacture is due to reasons beyond his control. 3 E. VII., c. 46, s. 5.

40. Term for importation may be extended.—Proviso.—The Commissioner may grant to the patentee or his legal representatives, for the whole or any part of the patent, an extension for a further term not exceeding one year, during which he may import or cause to be imported into Canada the invention for which the patent is granted, if he or they show cause, satisfactory to the Commissioner, to warrant the granting of such extension; but no extension shall be granted unless application is made to the Commissioner at some time within three months before the expiry of the twelve months aforesaid. 3 E. VII., c. 46, s. 6.

41. Validity of any extensions already granted.—The validity of any extension granted or assumed to be granted before the thirteenth day of August, one thousand nine hundred and three, of the period of two years theretofore limited by statute in that behalf for the commencement of the construction or manufacture of a patented invention, or of the period of twelve months theretofore so limited for the importation of a patented invention, shall not be open to impeachment, nor shall the patent for any invention in respect of which any such extension had been so granted be deemed to have lapsed or expired, because,—

(a) such extension, instead of being granted by the Commissioner, was so granted or assumed to be granted by the Deputy Commissioner, or, as acting deputy commissioner, by a person performing the duties of the Deputy Minister of Agriculture under the provisions of the Civil Service Act in that behalf, instead of by the Commissioner; or,

(b) in the case of the invention to which such extension relates, there had been granted or assumed to be granted a previous extension or previous extensions of such period of two years, or such period of twelve months, as the case may be. 3 E. VII., c. 46, s. 9.

42. Conditional validity of certain patents granted before August 13th, 1903.—The validity of any patent granted before the thirteenth day of August, one thousand nine hundred and three, shall not be impeached, nor shall such patent be deemed to have lapsed or expired, by reason of the failure of the patentee to construct or manufacture the patented invention, if the patentee within the period of two years from the date of the patent allowed for such construction or manufacture, or within an authorized extension of that period, became, and at all times thereafter continued to be, ready either to furnish the patented invention himself or to license the right of using it, on reasonable terms, to any person desiring to use it, and if the patentee, or his legal representatives, within six months from the thirteenth day of August, one thousand nine hundred and three, had,—

(a) commenced, and after such commencement continuously carried on in Canada, the construction or manufacture of the patented invention in such manner as to enable any person desiring to use it to obtain it, or cause it to be made for him, at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; or,

(b) applied for and thereupon obtained an order of the Com-

missioner making the patent subject to the condition hereinafter provided for authorizing application for the issue of licenses to make, construct, use and sell the patented invention. 3 E. VII., c. 46, s. 10.

43. Rights of third persons saved.—In the case of any patent which before the thirteenth day of August, one thousand nine hundred and three, had become void or the validity of which might have been impeached, and which was revived or protected from impeachment by any provision of the Act, passed in the third year of His Majesty's reign, chapter forty-six, intituled *An Act to amend the Patent Act*, or which, by reason of any such provision, is to be deemed not to have elapsed or expired, any person who had, between the time when such patent became void or the ground for such impeachment arose, and the thirteenth day of August, one thousand nine hundred and three, aforesaid, commenced to manufacture, use or sell in Canada the invention covered by such patent, may continue to manufacture, use or sell it in as full and ample a measure as if such revival or protection from impeachment had not been effected; and, in case any person had, before the thirteenth day of August aforesaid, contracted with the owner of the patent for the right to manufacture, use or sell such invention in Canada, the contract shall be deemed to have remained in full force and effect notwithstanding that the patent had become void as aforesaid, unless the person who had so contracted with such owner can show that in the meantime, by reason or on the faith of such invalidity or lapsing, he has materially altered his position with respect to such invention, and that the revival of such contract would cause him damage. 3 E. VII., c. 46, s. 14.

44. Conditions which may be substituted.—On the application of the applicant for a patent, previous to the issue thereof, or on the application within six months after the issue of a patent of the patentee or his legal representatives, the Commissioner, having regard to the nature of the invention, may order that such patent, instead of being subject to the condition with respect to the construction and manufacture of the patented invention hereinbefore provided, shall be subject to the following conditions, that is to say:—

(a) **Application by any person to use patent.**—**Order of Commissioner.**—Any person, at any time while the patent continues in force, may apply to the Commissioner by petition for a license to make, construct, use and sell the patented invention, and the Commissioner shall, subject to general rules which may be made for carrying out this section, hear the person applying and the owner of the patent, and if he is satisfied that the reasonable requirements of the public in reference to the invention have not been satisfied by reason of the neglect or refusal of the patentee or his legal representatives to make, construct, use or sell the invention, or to grant licenses to others on reasonable terms to make, construct, use or sell the same, may make an order under his hand and the seal of the Patent Office requiring the owner of the patent to grant a license to the person applying therefor, in such form, and upon such terms as to the duration of the license, the amount of the royalties, security for payment, and otherwise, as the Commissioner, having regard to the nature of the invention and the circumstances of the case, deems just;

(b) **Assessors.**—The Commissioner may, if he thinks fit, and

shall on the request of either of the parties to the proceedings, call in the aid of an assessor, specially qualified, and hear the case wholly or partially with his assistance;

(c) **More than one license may be granted.**—The existence of one or more licenses shall not be a bar to an order by the Commissioner for, or to the granting of a license on any application, under this section; and,

(d) **Forfeiture of patent for refusal to grant license.**—The patent and all rights and privileges thereby granted shall cease and determine, and the patent shall be null and void, if the Commissioner makes an order requiring the owner of the patent to grant any license, and the owner of the patent refuses or neglects to comply with such order within three calendar months next after a copy of it is addressed to him or to his duly authorized agent. 3 E. VII., c. 46, s. 7.

45. References to the Exchequer Court.—Jurisdiction of other courts.—Any question which arises as to whether a patent, or any interest therein, has or has not become void under any of the provisions of the seven last preceding sections of this Act, may be adjudicated upon by the Exchequer Court of Canada, which court shall have jurisdiction to decide any such questions upon information in the name of the Attorney General of Canada, or at the suit of any person interested; but this section shall not be held to take away or affect the jurisdiction which any court other than the Exchequer Court of Canada possesses. 3 E. VII., c. 46, s. 8.

CAVEATS.

46. Intending applicant for patent may file a "caveat."—Any intending applicant for a patent who has not yet perfected his invention and is in fear of being despoiled of his idea, may file, in the Patent Office, a description of his invention so far as it has proceeded, with or without plans, at his own will; and the Commissioner, on payment of the fee in this Act prescribed, shall cause the said document, which shall be called a *caveat*, to be preserved in secrecy, with the exception of delivering copies of the same whenever required by the said applicant or by any judicial tribunal, but the secrecy of the document shall cease when the applicant obtains a patent for his invention.

2. Notice of application by another to be sent to person filing "caveat."—If application is made by any other person for a patent for any invention with which such *caveat* may, in any respect, interfere, the Commissioner shall forthwith give notice by mail, of such application, to the person who has filed such *caveat*, and such person shall, within three months after the date of mailing the notice, if he wishes to avail himself of the *caveat*, file his petition and take the other steps necessary on an application for a patent, and if, in the opinion of the Commissioner, the applications are conflicting, like proceedings may be had in all respects as are by this Act provided in the case of conflicting applications.

3. Duration of "caveat."—Unless the person filing a *caveat* makes application within one year from the filing thereof for patent, the Commissioner shall be relieved from the obligation of giving notice, and the *caveat* shall then remain as a simple matter of proof as to novelty or priority of invention, if required. R.S., c. 61, s. 28.

PATENT FEES.

47. Tariff of fees.—The following fees shall be payable before an application for any of the purposes herein mentioned shall be received by the Commissioner, that is to say:—

Full fee for 18 years.. . . .	\$60.00
Partial fee for 12 years.. . . .	40.00
Partial fee for 6 years.. . . .	20.00
Fee for further term of 12 years	40.00
Fee for further term of 6 years.. . . .	20.00
On lodging a <i>caveat</i>	5.00
On asking to register a judgment <i>pro tanto</i>	4.00
On asking to register an assignment, or any other document affecting or relating to a patent	2.00
For each and every patent mentioned in any notice given to the Commissioner by the inventor after the issue of a foreign patent of his intention to apply for a patent in Canada for such invention	2.00
On asking to attach a disclaimer to a patent.	2.00
On asking for a copy of patent with specification.. . . .	4.00
On petition to re-issue a patent after surrender, in addition to the fees on the original patent which shall, notwithstanding such surrender, continue to be payable as aforesaid, for every unexpired year of the duration of the original patent	4.00
On office copies of documents, not above mentioned, the following charges shall be made:—	
For every single or first folio of one hundred words certified copy	\$0.25
For every such subsequent folio, fractions of or under one-half not being counted, and of one-half or more being counted as a folio	0.10

55-56 V., c. 24, s. 7; 56 V., c. 34, s. 4; 3. E. VII., c. 46, s. 11.

48. Copies of drawings.—For every copy of drawings, the person applying shall pay such sum as the Commissioner considers a fair remuneration for the time and labour expended thereon by any officer of the Patent Office, or of the Department, or person employed to perform such service. R.S., c. 61, s. 40.

49. Fees to be in full for all services.—The said fees shall be in full of all services performed under this Act, in any such case, by the Commissioner or any person employed in the Patent Office. R.S., c. 61, s. 41.

50. Application of fees.—All fees received under this Act shall be paid over to the Minister of Finance, and shall form part of the Consolidated Revenue Fund of Canada, except such sums as are paid for copies of drawings when made by persons not receiving salaries in the Patent Office. R.S., c. 61, s. 42.

51. Exception.—Return of fees in certain cases only.—No person shall be exempt from the payment of any fee or charge payable in respect of any services performed for such person under this Act; and no fee, when paid, shall be returned to the person who paid it, except,—

- (a) when the invention is not susceptible of being patented;
- (b) when the petition for a patent is withdrawn.

2. In every such case the Commissioner may return the fee paid less the sum of ten dollars. R.S., c. 61, s. 43.

GENERAL.

52. Government may use patented invention.—The Government of Canada may, at any time, use any patented invention, paying to the patentee such sum as the Commissioner reports to be a reasonable compensation for the use thereof. R.S., c. 61, s. 44.

53. As to use of patented invention in foreign vessels.—No patent shall extend to prevent the use of any invention in any foreign ship or vessel, if such invention is not so used for the manufacture of any goods to be vended within or exported from Canada. R.S., c. 61, s. 45.

54. Patent not to affect a previous purchaser.—**Proviso as to other persons.**—Every person who, before the issuing of a patent, has purchased, constructed or acquired any invention for which a patent is afterwards obtained under this Act, shall have the right of using and vending to others the specific article, machine, manufacture or composition of matter patented and so purchased, constructed or acquired before the issue of the patent therefor, without being liable to the patentee or his legal representatives for so doing; but the patent shall not, as regards other persons, be held invalid by reason of such purchase, construction or acquisition or use of the invention, by the person first aforesaid or by those to whom he has sold the same, unless the same was purchased, constructed, acquired or used, with the consent or allowance of the inventor thereof, for a longer period than one year before the application for a patent therefor, thereby making the invention one which has become public and in public use. R.S., c. 61, s. 46.

55. Patented article to be stamped or marked.—Every patentee under this Act shall stamp or engrave on each patented article sold or offered for sale by him the year of the date of the patent applying to such article, thus,—*Patented, 1906*, or as the case may be; or when, from the nature of the article, this cannot, be done, then by affixing to it, or to every package wherein one or more of such articles is or are inclosed, a label marked with a like notice. R.S., c. 61, s. 54.

56. Inspection by the public.—All specifications, drawings, models, disclaimers, judgments and other papers, except *caveats*, and except those filed in connection with applications for patents which are still pending, shall be open to the inspection of the public at the Patent Office, under such regulations as are adopted in that behalf. R.S., c. 61, s. 47; 3 E. VII., c. 46, s. 12.

57. Sale or destruction of models and specimens of composition.—The Commissioner may destroy, sell or otherwise dispose of, in such manner as he deems best in the public interest, all models and specimens of composition of matter and of ingredients thereof filed in connection with applications for patents of invention after they have served their immediate purpose.

2. Money arising therefrom.—All money arising from the sale or disposal of such models or specimens shall be paid into the Consolidated Revenue Fund of Canada. 3 E. VII., c. 46, s. 15.

58. Clerical errors.—Clerical errors which occur in the framing or copying of any instrument in the Patent Office shall not be construed as invalidating the same, but, when discovered, they may be corrected under the authority of the Commissioner. R.S., c. 61, s. 48.

59. Certified copy of destroyed or lost patent.—If any patent is destroyed or lost, a certified copy thereof may be issued in lieu thereof upon the person who applies therefor paying the fees hereinbefore prescribed for office copies of documents. R.S., c. 61, s. 49; 53 V., c. 13, s. 4.

60. Seal of Patent Office to be evidence.—Every court judge and person whosoever shall take notice of the seal of the Patent Office and shall receive the impressions thereof in evidence, in like manner as the impressions of the Great Seal are received in evidence, and shall also take notice of and receive in evidence, without further proof and without production of the originals, all copies or extracts certified under the seal of the Patent Office to be copies of or extracts from documents deposited in such office. R.S., c. 61, s. 50

61. Officers of Patent Office not to deal in patents.—No officer or employee of the Patent Office shall buy, sell or acquire or traffic in any invention or patent, or in any right to a patent; and every such purchase and sale, and every assignment or transfer thereof by or to any officer or employee, as aforesaid, shall be null and void, but this provision shall not apply to any original inventor, or to any acquisition by bequest. R.S., c. 61, s. 51.

62. Regulations may be made and forms prescribed.—The Commissioner may, from time to time, subject to the approval of the Governor in Council, make such rules and regulations, and prescribe such forms, as appear to him necessary and expedient for the purposes of this Act, and notice thereof shall be given in the *Canada Gazette*; and all documents, executed in conformity with the same and accepted by the Commissioner, shall be held valid, so far as relates to proceedings in the Patent Office. R.S., c. 61, s. 52.

63. Annual report for Parliament.—The Commissioner shall cause a report to be prepared annually and laid before Parliament of the proceedings under this Act, and shall, from time to time, and at least once in each year, publish a list of all patents granted and may with the approval of the Governor in Council, cause such specifications and drawings as are deemed of interest, or essential parts thereof, to be printed, from time to time, for distribution or sale. R.S., c. 61, s. 53.

OFFENCES AND PENALTIES.

64. Patented articles to be stamped or marked.—Penalty for default.—Any patentee under this Act who sells or offers for sale any article patented under this Act not stamped or engraved with the year of the patent, applying to such article, or when from the nature of the article this cannot be done, not having affixed to it or every package wherein one or more of such articles is or are inclosed a label marked with the year of the date of the patent applying to such article in manner and form provided by this Act, shall be liable to a penalty not exceeding one hundred dollars, and, in default of the payment of such penalty, to imprisonment for a term not exceeding two months. R.S., c. 61, s. 54.

65. Falsely marking an article as patented.—Every person who,—

(a) writes, paints, prints, moulds, casts, carves, engraves, stamps or otherwise marks upon anything made or sold by him, and for

the sole making or selling of which he is not the patentee, the name or any imitation of the name of any patentee for the sole making or selling of such thing, without the consent of such patentee; or,

(b) without the consent of the patentee, writes, paints, prints, moulds, casts, carves, engraves, stamps, or otherwise marks upon anything not purchased from the patentee, the words, *Patent, Letters Patent, King's or Queen's Patent, Patented*, or any word or words of like import, with the intent of counterfeiting or imitating the stamp, mark, or device of the patentee, or of deceiving the public and inducing them to believe that the thing in question was made or sold by or with the consent of the patentee or his legal representatives; or.

(c) offers for sale as patented any article not patented in Canada, for the purpose of deceiving the public;

An indictable offence—is guilty of an indictable offence, and liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months, or to both. R.S., c. 61, s. 55.

66. Making certain false entries on copies an indictable offence.—Every person who willfully makes or causes to be made any false entry in any register or book, or any false or altered copy of any document relating to the purposes of this Act, or who produces or tenders any such false or altered document in evidence, knowing the same to be such, is guilty of an indictable offence and shall be liable to be punished by fine and imprisonment accordingly. R. S., c. 61, s. 56.

RULES AND FORMS

OF THE

CANADIAN PATENT OFFICE

(REVISED AND AMENDED)

By Order in Council dated 23rd February, 1904

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RULES.

1. Personal appearance not required.—A personal appearance of the applicant, or his representative, at the Patent Office is not required, unless specially called for by the Commissioner.

2. Responsibility of applicant.—In all cases the applicant or depositor of any paper is responsible for the merits of his allegations, and the validity of the instruments furnished by him or his agent.

3. Correspondence.—Correspondence may be carried on either with the applicant, or his agent, but only with one person, and will be conveyed through the Canadian mails free of charge.

4. Documents, how to be prepared.—All documents must be legibly and neatly written or printed on foolscap paper, 13 inches long and 8 wide, with an inner margin of one inch and a half wide.

5. How to be addressed.—All communications are to be addressed—“*The Commissioner of Patents, Ottawa, Canada.*” Papers forwarded to the Office should be accompanied by a letter, and a separate letter should be written on every subject.

6. Forms of proceedings.—As regards proceedings not specially provided for in the accompanying forms, any other form being conformable to the letter and spirit of the law may be accepted, and if not conformable therewith will be returned for correction.

7. Models to be furnished only when required by Commissioner.—Samples.—Models need only be furnished when required by the Commissioner, and must be neat and substantial working ones, not exceeding 12 inches on the longest side, unless otherwise allowed by special permission; models must be so constructed as to show exactly every part of the invention claimed and its mode of working. In cases where samples of ingredients are required by law, they must be contained in glass bottles properly arranged; but dangerous or explosive substances must not be sent. Both models and bottles must bear the name of the inventor, the title of the invention and date of the application; they must be furnished to the Patent Office free of charge and in good order.

8. Fees, how to be transmitted.—All fees should be transmitted with the application for any action by the office. Remittances must be in current bankable funds, bank drafts, money orders, or certified cheques payable at par at Ottawa. Money sent by mail should be in registered letters and is at the risk of the sender. Drafts, money orders and cheques should be made payable to the Commissioner of Patents, Ottawa.

9. Application to be proceeded with within one year.—An applicant for an original patent, or for the re-issue of a patent, shall proceed with his application with due diligence; and upon his failure to prosecute the same within a period of one year after the date of the acknowledgment of the filing of his application, or other subsequent official action of which notice have been duly given, the same shall be held to be abandoned, and any fees paid thereon forfeited, unless the Commissioner is satisfied that the cause of the delay was not the fault of the applicant.

Commissioner may order action within a shorter period.—In any case, however, in which it is established to the satisfaction of the Commissioner that there is unnecessary delay on the part of the applicant in the prosecution of his application, and that such delay may injure the rights of other parties, the Commissioner may require the applicant to proceed with the prosecution of his application within such period less than one year as to the Commissioner may seem reasonable; and upon the failure of the applicant so to do, his application shall be held to be abandoned, with forfeiture of fees, as aforesaid.

Proper action.—Prosecution of an application, to save it from abandonment, must include such proper action as the condition of the case may require.

10. Separate inventions.—Two or more separate inventions cannot be claimed in one application, nor included in one Patent. But if separate matters are represented to be so dependent on, and connected with, each other as to be necessarily taken together, to obtain the end sought for by the inventor, the Commissioner of Patents shall be the judge whether or not the pretensions of the applicant in such respect can be entertained.

11. Protest, effect of.—The filing of a protest against the issuing of a Patent shall not be taken in itself as sufficient reason to withhold the granting of such Patent to an applicant.

12. Caveat.—Single invention.—A *Caveat* can only be filed by an inventor, and shall be composed of a specification (*and drawings*), certified on oath (Form No. 17) and the applicant may, while it is pending, lodge additional papers, provided they relate exclusively to the same invention. The person filing a *Caveat* will not be entitled to notice of any application pending at the time of filing his *Caveat*. A *Caveat* must be limited to a single invention.

Caveat specification.—The specification of a *Caveat* should be sufficiently precise to enable the Office to judge whether there is a probable interference when a subsequent application is filed.

13. Drawings.—Drawings in duplicate, to be attached to the duplicate specification, must be made in India or carbon ink, on sheets of tracing cloth other than Linaura or similar fabric, eight by thirteen inches, neatly executed and without colours.

Certificate.—Each sheet of tracing linen shall contain the following certificate at the bottom: "Certified to be the drawings referred to in the specification hereunto annexed," and signed by the inventor or his attorney; place, date, and signature of two witnesses.

All drawings must be clear, sharp, well-defined, not too fine and perfectly black.

Lines that are pale, ashy, very fine, ragged or broken, give bad results when photo-lithographed.

Brush-shading, tinting and imitation surface graining should never be used; and in fine-shading the result should be attained with as few lines as possible.

Section lines.—Section lines also should be as open in their spacing as the case will admit of, and these, as well as all right lines, in order to insure clearness, should be made with a ruling pen. The shading of convex and concave surfaces may be dispensed with when the invention is otherwise well illustrated.

Shade lines.—Shade lines may sometimes be used with good effect, but heavy shadows where they would obscure lines or letters of reference, should be avoided.

Bristol, card board, size of, etc.—With each application an extra full set of drawings must be supplied on double Bristol Board, 8 by 13 inches, without writing on its face, merely the usual reference letters; no title, certificate, nor signatures; on the back of the sheet the name of the inventor and the title of the invention must be written in pencil.

Transmission of card board drawings.—The card board drawing should be rolled on a roller for transmission to the office, as folding will prevent its usefulness for photo-lithographing.

14. Re-issue of patents.—Separate Patents.—In the matter of a re-issue, under Section 24 of the Act, whatever is really embraced in the original application and so described or shown in the same, that it might have been embraced in the original Patent, may be ground for a re-issue. No new matter can be introduced into the specifications, nor shall the models or drawings be amended except each by the other. In the absence of model or drawing, the re-issue may contain amendments, upon satisfactory proof to the Commissioner that such amendments were part of the invention, although omitted in the original application. Separate patent may be issued for each separate and distinct part of the invention, comprehended in the original patent.

15. Pending applications.—Information in relation to pending applications will be furnished only to applicants, or to such persons as may be duly authorized in writing by them to obtain the same.

16. Office can not respond to certain inquiries.—Nor act as counsellor.—The Office can not respond to inquiries as to the probability of an alleged invention being patented in advance of an application for a Patent; nor to inquiries founded on brief or imperfect descriptions, propounded with a view of ascertaining whether alleged improvements have been patented, nor unless the name of the patentee, and, as nearly as possible, the date of the patent, be given; nor can it act as an expounder of the Patent Law, nor as counsellor for individuals, except as to questions within the office.

In order to avoid unnecessary explanations and useless loss of time and labour, it is particularly recommended that reference be made to the law before writing on any subject to the Patent Office.

Marked Rules and Forms.—A copy of the Rules with a particular section marked, sent to any person making an inquiry, will be deemed a respectful answer by the Office.

17. Proceedings, how facilitated.—It is desirable, both in the interests of the applicant and of the public service, that the papers and drawings should be prepared by competent persons. Therefore, the applicant is advised, unless himself competent to draw up papers, in connection with the application, to employ a skilled attorney, as the value of patents is largely based upon the ability with which the specification and claims have been prepared. The Office will always decline to advise the selection of an attorney.

18. Transactions to be in writing.—All business with this Office should be transacted in writing. The action of the Office will be based exclusively on the written record. No attention will be paid to any alleged verbal promise or understanding in relation to which there is any disagreement or doubt.

19. Assignments.—An assignment is to be accompanied by a copy thereof; the original will be kept in the Patent Office, and the copy will be returned to the person sending it, with certificate of registration thereon.

20. Miscellaneous cases, how to be decided.—All cases connected with the intricate and multifarious proceedings arising from the working of the Patent Office, which are not specially defined and provided for in these Rules, will be decided in accordance with the merits of each case under the authority of the Commissioner; and such decision will be communicated to the interested parties in writing.

21. Fee must accompany application.—Applications for patents sent to this Office, unaccompanied by the fee provided by law, will receive no official recognition, nor be filed nor numbered; they will merely be pigeon-holed, and only marked filed the day on which the fee shall have been received.

22. Right to amend application.—The applicant has a right to amend before or after the first rejection or action; and he may amend as often as the examiner presents new references or reasons for rejection. In so amending, the applicant must clearly point out by letter accompanying his amendments and not therein, all the patentable novelty which he thinks the case presents in view of the state of the art disclosed by the reference cited or the objections made. He must also show how the amendments avoid such references or objections.

23. Amendment of Drawing and Specification.—The specification and drawing must be amended and revised when required, to correct inaccuracies of description or unnecessary prolixity, and to secure correspondence between the claim, the specification and the drawing. But no change in the drawing may be made except by written permission of the office.

24. How amendments are to be made.—Amendments must not be made by erasures or insertions in the original papers, but must be made on fresh sheets of paper, so that the sheets containing the matter to be amended may be removed from the application and replaced by sheets containing the amendments.

Amendments to the specifications must be made in duplicate, and those to the claims in triplicate.

COMPULSORY LICENSES.

25. Petition for grant of compulsory license or revocation of Patent.—A petition to the Commissioner for an order for a license under Section 44, paragraph (a), of the Act, shall show clearly the ground or grounds upon which the petitioner claims to be entitled to a license, and shall state in detail the circumstances of the case, the terms upon which he asks that an order may be made, the purpose of such order, and the name and address of the patentee and of any other person who is alleged in the petition to have made default.

26. To be left with evidence at Patent Office.—The petition and an examined copy thereof shall be left at the Patent Office, accompanied by affidavits or statutory declarations in proof of the allegations contained in the petition, together with any other documentary evidence in support; and petitioner shall within ten days after the leaving of such petition deliver to the patentee and any other person who is alleged in the petition to have made default, copies of the petition and of such affidavits or statutory declarations and other documentary evidence in support.

27. Opposants oppositions and evidence.—**Evidence in reply.**—The person to whom such copies are delivered by the petitioner may, within ten days after being invited to do so by the Commissioner, leave at the Patent Office their oppositions to such petition, together with their affidavits or statutory declarations or other documentary evidence in support, in answer, and if they do so, shall deliver copies thereof to the petitioner within ten days, and the petitioner may within ten days from such last mentioned delivery leave at the Patent Office his affidavits or statutory declarations and other documentary evidence, in reply; and if he does so, shall deliver copies thereof to the patentee or any other person alleged in the petition to have made default within ten days, such last mentioned affidavits or statutory declarations being confined to matters strictly in reply.

28. Closing of evidence.—No further evidence than as aforesaid may be left by either side at the Patent Office, except by leave or on requisition of the Commissioner, and upon such terms, if any, as he may think fit.

29. Other parties interested may be allowed to intervene.—The Commissioner may at any stage of the proceedings before granting his order, give notice of the proceedings, and furnish copies thereof to any person not a party thereto who may be interested in the patent and whose rights may be affected by his order, and may allow such person to intervene in the proceedings. After such person has been allowed to intervene, he shall be governed by these rules as though the petitioner had alleged in his petition that such person was in default.

30. Hearing of the petition.—On completion of the evidence, or after the expiration of the time for completing the same, the Commissioner, on the request of the petitioner, shall fix a time for hearing the petition, and shall give notice to the petitioner, the patentee, and all other parties to the proceedings, that it is his intention to hear the petition on a specified day, which day shall not be less than two weeks from the date when the notice is served.

31. Documents to be typewritten or printed.—All petitions and other documents lodged at the Patent Office shall (unless the Commissioner otherwise direct), be typewritten or printed, and the parties shall furnish as many copies of the documents lodged by them as shall be required by the Commissioner.

32. Copies of papers.—**Addresses of parties.**—Parties shall be entitled to have copies of all papers lodged in respect to the petition, at their own expense. The petitioner and each of the other parties shall specify an address for service in Canada, and may be heard in person or by counsel or by a duly authorized agent.

33. Counsel on behalf of Crown.—The Commissioner shall if so requested hear counsel on behalf of the Crown on the question of granting the prayer of any petition. Counsel on behalf of the Crown shall not be required to give notice of the grounds of any objection he may think fit to take or of any evidence which he may think fit to place before the Commissioner.

34. Service of notice.—Any notice required to be served or given by the rules relating to compulsory license may be served or given by posting the same to the party to be notified in a registered envelop, and documents required to be delivered may be delivered in the same way.

35. Alterations or enlargements of times prescribed by rules.—The times prescribed by these rules may be altered or enlarged by the Commissioner if he thinks fit, upon such notice to parties interested and upon such terms, if any, as he may direct.

APPENDIX OF FORMS.

PETITIONS.

FORM 1.

BY A SOLE INVENTOR.

To the Commissioner of Patents, Ottawa:

The petition of John Smith, of the city of Toronto, in the Province of Ontario, carpenter, sheweth:

That he hath invented new and useful improvements in Machines for Breaking Stones, not known or used by others before his invention thereof, and not being in public use, or on sale, with his consent or allowance as such inventor, for more than one year previous to his application for a Patent therefor in Canada.

Your petitioner, therefore, prays that a patent may be granted to him for the said invention, as set forth in the specification in duplicate relating thereto, and, for the purposes of the Patent Act, your petitioner elects his domicile in the city of Ottawa, Province of Ontario.

JOHN SMITH.

TORONTO, 1st September, 1903.

FORM 2.

BY JOINT INVENTORS.

To the Commissioner of Patents, Ottawa:

The petition of James Thomas, blacksmith, and George Robert Major, tinsmith, both of the city of Ottawa, in the County of Carleton, in the Province of Ontario, sheweth:

That they have jointly invented a new and useful improvement in the Art or Process of Separating Smut from Wheat, not known or used by others before their invention thereof, and not being in public use, or on sale, with their consent or allowance as such inventors, for more than one year previous to their application for a Patent therefor in Canada.

Your petitioners, therefore, pray that a Patent may be granted to them jointly for the said invention, as set forth in the specification in duplicate relating thereto, and, for the purposes of the Patent Act, your petitioners elect their domicile in the city of Ottawa, Province of Ontario.

JAMES THOMAS.
GEORGE ROBERT MAJOR.

OTTAWA, 1st September, 1903.

FORM 3.

BY AN ADMINISTRATOR OR EXECUTOR.

To the Commissioner of Patents, Ottawa:

The petition of James Clayton, of the city of Kingston, in the Province of Ontario, stone-cutter, administrator of the estate (or executor of the last will and testament) of Thomas Clayton, in his lifetime, of the said city of Kingston, deceased, millwright (as reference to the duly certified copy of letters of administration, or letters testamentary, hereto annexed will more fully appear), sheweth:

That the said Thomas Clayton did invent a new and useful Composition of Matter for making Artificial Stone, not known or used by others before his invention thereof, and not being in public use or on sale with the consent or allowance of the said Thomas Clayton as such inventor, for more than one year previous to this application for a Patent therefor in Canada.

Your petitioner, therefore, prays that a Patent may be granted to him, as administrator (or executor) of the estate of the said Thomas Clayton for the said invention, as set forth in the specification in duplicate relating thereto, and, for the purposes of the Patent Act, your petitioner elects his domicile in the city of Ottawa, Province of Ontario.

JAMES CLAYTON.

KINGSTON, 1st September, 1903.

FORM 4.

FOR A RE-ISSUE (BY THE INVENTOR).

To the Commissioner of Patents, Ottawa:

The petition of Thomas Brown, in the city of Ottawa, in the Province of Ontario, lumber manufacturer, sheweth:

That your petitioner obtained a Patent bearing date the twelfth day of August, A. D. 1902, for a new and useful improvement in Churns.

That the petitioner is advised that the said Patent is deemed defective, or inoperative, by reason of insufficient description or specification, and that the errors arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention.

Your petitioner, being desirous of obtaining a new Patent in accordance with the amended description and specification in duplicate, therefore prays that he may be allowed to surrender the aforesaid Patent, and a new Patent be granted to him, in accordance with the amended description and specification of the said invention, for the unexpired period for which the original patent was granted.

THOMAS BROWN.

OTTAWA, 1st September, 1903.

FORM 5.

FOR A RE-ISSUE (BY THE ASSIGNEE).

To the Commissioner of Patents, Ottawa:

The petition of David Lane, of the town of Cobourg, in the County of Northumberland, Province of Ontario, tanner, sheweth:

That your petitioner, by assignment bearing date the 24th day of June, 1903, obtained the exclusive right to a Patent granted to Thomas Tardy, of the city of Ottawa, Province of Ontario, broom maker, on the first of July, 1902, for new and useful improvements in Planing Machines.

That your petitioner is advised that the said Patent is deemed defective or inoperative by reason of insufficient description, or specification, and that the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention.

Your petitioner, being desirous of obtaining a new Patent in accordance with an amended description and specification in duplicate, therefore prays that he may be allowed to surrender the aforesaid Patent, and that a new Patent be granted to him, as assignee of the said Thomas Tardy, in accordance with the amended description and specification of the said invention, for the unexpired period for which the original Patent was granted.

DAVID LANE.

COBOURG, 1st September, 1903.

The above form is to be altered to suit the case, when the re-issue is to the administrator, or executor, of a deceased inventor.

FORM 6.

SURRENDER FORM TO ACCOMPANY APPLICATION FOR RE-ISSUE.

To all to whom these presents shall come, Thomas Brown, of the city of Ottawa, in the Province of Ontario, lumber manufacturer, within named, sends greeting:—

Whereas the within written Patent, for an improvement in churns, is deemed defective, or inoperative, by reason of insufficient description, or specification, and the error arose from inadvertence, accident or mistake, without any fraudulent or deceptive intention, and the Commissioner of Patents accordingly, in pursuance of the statute in such respects, hath agreed to accept the surrender of the same;

Now know ye, that the said Thomas Brown, within named, doth by these presents, surrender and yield up the within written Patent, granted to him for improvements in Churns, and bearing date the 8th day of June, 1902.

In witness whereof the said Thomas Brown hath set his hand and affixed his seal this first day of September, A.D., 1903.

THOMAS BROWN. [L.S.]

Signed, sealed and delivered at the city of Ottawa, in the County of Carleton, in the Province of Ontario, in the presence of

HENRY COCKBURN.

FORM 7.

POWER OF ATTORNEY.

To the Commissioner of Patents, Ottawa:

The undersigned, John Brown, of the town of Cornwall, in the County of Stormont, in the Province of Ontario, storekeeper, hereby appoints John Smith, of the city of Ottawa, Province of Ontario, his attorney, with full power of substitution and revocation, to prosecute an application for new and useful improvements in Sewing Machines, to make alterations and amendments therein, to sign the drawings, to receive the Patent and to transact all business in the Patent Office connected therewith.

Signed at Cornwall, this 1st day of September, 1903.

In the presence of

JOHN BROWN.

JOHN SMITH.

FORM 8.

REVOCATION OF POWER OF ATTORNEY.

To the Commissioner of Patents, Ottawa.

The undersigned, John Brown, of the town of Cornwall, in the County of Stormont, in the Province of Ontario, storekeeper, having on or about the 1st September, 1903, appointed John Smith of the city of Ottawa, Province of Ontario, his attorney, to prosecute an application for a Patent for new and useful improvements in Sewing Machines, hereby revokes the power of attorney then given.

Signed at Cornwall, this thirteenth day of September, 1903.

In the presence of

JOHN BROWN.

JOHN SMITH.

SPECIFICATIONS.

FORM 9.

FOR A MACHINE.

To all whom it may concern:

Be it known that I, William Woodworth, of the town of Perth, in the County of Lanark, in the Province of Ontario, gentleman, having invented certain new and useful improvements in Meat Chopping Machines (for which I have obtained a patent in [here name the country] No. bearing date 190);* do hereby declare that the following is a full, clear, and exact description of the same.

My invention relates to improvements in meat-chopping machines in which vertically-reciprocating knives operate in conjunction with a rotating chopping-block; and the objects of my improvement are, first, to provide a continuously-lubricated bearing for the block; second, to afford facilities for the proper adjustment of the knives independently of each other in respect to the face of the block; and, third, to reduce the friction of the reciprocating rod which carries the knives.

I attain these objects by the mechanism illustrated in the accompanying drawing, in which—

Figure 1 is a vertical section of the entire machine; Fig. 2, a top view of the machine as it appears after the removal of the chopping-block and knives; Fig. 3, a vertical section of a part of the machine on the line 1, 2, Fig. 2; and Fig. 4, a detailed view in perspective of the reciprocating cross-head and its knives.

Similar letters refer to similar parts throughout the several views.

The table or plate A, its legs or standards B B, and the hanger *a*, secured to the under side of the table, constitute the frame-work of the machine. In the hanger *a* turns the shaft D, carrying a fly-wheel E, a crank-pin, on the hub of which is connected by a link *b* to a pin passing through a cross-head G, and to the latter is secured a rod H, having at its upper end a cross-head I, carrying the adjustable chopping-knives *d d*, referred to hereinafter.

The cross-head G, reciprocated by the shaft D, is provided with antifriction rollers *e e*, adapted to guides *f f*, secured to the under side of the table A, so that the reciprocation of this cross-head may be accompanied with as little friction as possible.

To the under side of a wooden chopping-block J is secured an annular rib *h* adapted to and bearing in an annular groove *i* in the table A. (See Figs. 1 and 2.) This annular groove or channel is not of the same depth throughout, but communicates at one or more points (two in the present instance) with the pockets or receptacles *j j*, deeper than the groove, and containing supplies of oil in contact with which the rib *h* rotates, so that the continuous lubrication of the groove and rib is assured. The rod H passes

*NOTE.—If no foreign patent has been obtained, the words in parenthesis should be omitted.

through and is guided by a central stand K, secured to the table A, and projecting through a central opening in the chopping-block without being in contact therewith, the upper portion of the said stand being contained within a cover *k*, which is secured to the block, and which prevents particles of meat from escaping through the central opening of the same.

The cross-head I, previously referred to, and shown in perspective in Fig. 4, is vertically adjustable on the rod H, and can be retained after adjustment by a set-screw *x*, the upper end of the rod being threaded for the reception of nuts, which resist the shocks imparted to the cross-head when the knives are brought into violent contact with the meat on the chopping-block.

The knives *d d* are adjustable independently of each other and of the said cross-head, so that the coincidence of the cutting-edge of each knife with the face of the chopping-block may always be assured.

I prefer to carry out this feature of my invention in the manner shown in Fig. 4, where it will be seen that two screw-rods *m m* rise vertically from the back of each knife and pass through lugs *n n* on the cross-head, each rod being furnished with two nuts, one above and the other below the lug through which it passes. The most accurate adjustment of the knives can be effected by the manipulation of these nuts.

A circular casing *p* is secured to the chopping-block, so as to form on the same a trough P for keeping the meat within proper bounds; and on the edge of the annular rib *h*, secured to the bottom of the block, are teeth for receiving those of a pinion *q*, which may be driven by the shaft D through the medium of any suitable system of gearing, that shown in the drawing forming no part of my present invention.

This shaft D may be driven by a belt passing round the pulleys *s*, or it may be driven by hand from a shaft W, furnished at one end with a handle *t*, and at the other with a cog-wheel R, gearing into a pinion on the said shaft D.

A platform T may be hinged, as at *w*, to one edge of the table A, to support a vessel in which the chopped meat can be deposited. The means by which it may be supported, and the most convenient method of disposing of it when not in use, are shown in Fig 1.

I am aware that prior to my invention meat-chopping machines have been made with vertically-reciprocating knives operating in conjunction with rotating chopping-blocks. I therefore do not claim such a combination broadly; but

What I do claim as my invention, and desire to secure by letters patent, is—

1. The combination, in a meat-chopping machine, of a rotary chopping-block having an annular rib, with a table having an annular recess and a pocket communicating with the said recess, all substantially as set forth.

2. In a meat-chopping machine, the combination of a rotary chopping-block with a reciprocating cross-head carrying knives, each of which is vertically adjustable on the said cross-head independently of the other, substantially as described.

3. The knife *d*, having two screw-rods, *m m*, attached to its back, substantially as shown, for the purpose specified.

4. The combination, in a meat-chopping machine, of the reciprocating rod, carrying the knives, the cross-head secured to the said rod, and having anti-friction rollers, with guides, adapted to the said rollers, all substantially as set forth.

WILLIAM WOODWORTH.

PERTH, 4th September, 1903.

Signed in the presence of
JETHRO WOOD,
OLIVER EVANS.

NOTE.—The specification including the claims must be in duplicate, and in addition a third copy of the claims alone must be furnished.

FORM 10.

FOR AN ART OR PROCESS.

To all whom it may concern:

Be it known that we, Marion Ellsworth, of the City of Toronto, County of York, in the Province of Ontario, gentleman, and Joseph Richard Shaw, of the town of Lachute, County of Argen-teuil, Province of Quebec, gentleman, have jointly invented a certain new and useful Process of Treating Sludge Oil, in order to obtain from it a resinous substance (for which we have obtained a patent in [here name the country], No. , bearing date 190 , * of which the following is a specification:

In the purification of hydrocarbon oils produced by the distillation of crude petroleum, asphalts, or bitumens, or by the destructive distillation of coal, resins, or bituminous shales, the oils are agitated with 2 per cent. or more of concentrated sulphuric acid (60° Baumé, 1.86 specific gravity), in order to remove certain oils contained in the distillate which would, in course of time, absorb oxygen from the air, and cause the oil to become dark-coloured and gummy, and also to remove tarry substances and the disagreeable odour. Sulphuric acid combines chemically with these bodies and dissolves them, forming a dark-red, heavy liquid, which settles on the bottom of the agitator, and can then be readily drawn off from the purified oil. This peculiar compound of sulphuric acid and hydrocarbon oils, dissolved in the excess of acid, is known as "sludge." At present it is purchased by superphosphate manufacturers, who mix it with a little water, which decomposes the compound of acid and oil, producing a weaker acid (about 50° baumé) used in the manufacture of superphosphate of lime, and a dark-coloured offensive oil, which rises to the surface of the acid, and usually is thrown away, no commercial use having been found for it. This waste product is called "sludge oil."

The mode of practicing our invention is as follows: In our process, when the sludge has been decomposed by the addition of water, the sludge oil is drawn off, and is then purified by repeated

*NOTE.—If no foreign patent has been obtained, the words in parenthesis may be omitted.

washings with water, until the acid remaining in it is removed. For this purpose equal volumes of water and sludge oil may be used; but the washing can be effected by a less quantity of water. The acid remaining in the oil, if any, is then neutralized with quicklime or caustic soda. The purified oil has a strong and somewhat disagreeable odour, and contains about 10 per cent. of volatile oils, which are converted into a hard resin with difficulty. To remove these volatile substances, the sludge oil thus purified is introduced into a still with the addition of from 2 to 4 per cent. of caustic soda and about 2 per cent. of the oxides of lead or manganese, to oxidize any sulphurous body which may be in the oil and combine with it, and steam is then blown through the oil, the oil being kept hot either by a fire under the still or by the use of steam heated to the required temperature (between 212° and 450° Fahrenheit). The action of the steam is continued until no more volatile oils are removed, usually from five to ten hours. The steam is then shut off, and the contents of the still allowed to settle, when a sediment of tarry impurities and soda subsides, from which the pure oil may be drawn off. The oil is then introduced into a still or tank, and oxidized by blowing currents of air through it, the oil being kept at a moderate temperature (from 200° to 300° Fahrenheit), either by a slow fire under the still, or by a steam coil in the bottom of the tank, or by heating the air by a hot-blast oven to the proper temperature before it is blown through the oil, and the action of the air is continued until complete oxidation is effected, and a sample on cooling solidifies to a more or less hard resin.

The time required to effect the oxidation varies with the working temperature and with the extent of surface of oil brought in contact with the air. We may define it as between four and twelve days. The action of the air upon the oil is stopped when samples on cooling, taken from the contents of the still, are found to be of the proper degree of hardness and toughness for the particular purpose to which the product is to be applied, and after letting the contents of the still settle the hot resin is drawn off from the sediment of soda and impurities.

The action of the air may be accelerated by adding other oxidizing agents—for example, about 2 per cent. of the oxides of lead or manganese, or about 2 per cent. of the manganates of soda and potassa to the oil. These substances act either by giving up oxygen to the oil or by their presence inducing a combination of the oxygen and the hydrocarbon.

An inferior quality of resin may be produced by treating the washed sludge oil in a still with caustic soda and litharge (5 per cent. soda to 1 to 2 per cent. litharge) and blowing a current of air through it at about the temperature of 350° Fahrenheit, which at the same time oxidizes the oil and removes the more volatile portions, which are distilled off until it is converted into a resin, which, on cooling, becomes hard and brittle. This process last mentioned requires from two to six days, but the resin produced is darker in colour than that made by first treating with steam and then with air at a lower temperature, as the colouring matter is not affected by steam at 400°, while air at that temperature rapidly darkens it by oxidation. Sunlight bleaches the colour of sludge oil, and, at the same time, greatly accelerates the absorption of oxygen from the air. To produce the lightest coloured re-

sins the sludge oil is steamed with 5 per cent. of a solution of soda, 20° Baumé, at a low temperature about 200° to 250° Fahrenheit for ten hours), to remove the more volatile portions, and then oxidized and bleached by exposing the oil, in shallow tanks covered by glass, to the action of the sunlight, the oil being kept hot and fluid by a steam coil in the bottom of the tank, and currents of air blown through it to produce the oxidation.

Inferior qualities of sludge oil, as those produced in the purification of lubricating oils, and which contain a large quantity of tarry substances, are treated as follows: The oil is charged in to a still, and caustic soda and black oxide of manganese, in the proportion of about 5 per cent. of soda and 2 per cent. of manganese, are added, and the charge distilled by a current of steam blown through the oil, assisted by a fire under the still, until only tar and coke remain behind. The distillation commences at about 350° Fahrenheit, and, the fire being increased, the temperature in the still gradually rises to about 800°, when only the thick pitch remains in the still.

By the use of steam under pressure the oil can be distilled with scarcely any decomposition, and the distillate, which is of a yellow light-red colour, can be converted into a superior resin by oxidizing it with a current of hot air. The resin produced by this oxidation of sludge oil is distinguished from all other known resins and resinous substances by its behaviour with different chemicals and solvents. It varies in colour from yellow to dark garnet red, according to the method of its production. It is hard, brittle, and odourless at ordinary temperatures, tasteless, insoluble, and not acted upon by water, soda, potassa, and ammonia, even when heated.

Alcohol of 95 per cent. dissolves but small quantities of this resin, even when boiled with it. Petroleum-naphtha dissolves it very quickly without the aid of heat, producing a varnish. Spirits of turpentine readily dissolves the melted resin, forming a varnish. Benzole, chloroform, and bisulphide of carbon all dissolve the resin, the solution being aided by warming. Ether and a mixture of ether and alcohol, in equal parts, quite readily dissolve it, but not so readily as pure ether. Linseed oil and olive oil dissolve the melted resin. A solution of the resin in linseed oil and spirits of turpentine forms an "oil varnish." Concentrated sulphuric acid dissolves it completely; the resin separates again on adding water. Nitric acid attacks it violently and converts it into a brown tarry or gummy substance, having a pleasant, peculiar odour. Hydrochloric acid seems to have little or no action on it.

It is well known that it has been proposed to use sludge oil as a paint oil, but this has not been attended with practical success. We do not wish to be understood, however, as making claim, broadly, to a process for freeing sludge oil from the acid by the use of water and caustic alkalies, or by still further purifying it by subjecting it to distillation, or by blowing steam through it, for the purpose of removing impurities, all of which, it is well known, have been practiced since the discovery of the present processes of refining petroleum. Nor do we wish to be understood as laying claim in this application to the resinous substance produced by our process, as that forms the subject-matter of another application by us for letters patent.

We claim—

1. The process herein described for producing from sludge oil a resinous substance possessing the properties described, which consists in combining the oxygen of the air with the sludge oil with the aid of a moderate degree of heat.

2. The process of producing from sludge oil a substance of a resinous character, which consists in treating the sludge oil while heated to a moderate temperature, with air and with other oxidizing agents, substantially as described.

3. The process of treating sludge oil in order to obtain from it a resinous substance, which consists in purifying such oil, distilling from it the volatile substances present therein, heating the residue to a temperature of from 200° to 300° Fahrenheit, and blowing air into it while it is so heated, substantially as described.

MARION ELLSWORTH
JOSEPH R. SHAW.

Toronto, 1st September, 1903.

Signed in the presence of
MAURICE JONES.
HENRY ELIAS.

NOTE.—The specification including the claims must be in duplicate, and in addition a third copy of the claims alone must be furnished.

FORM 11.

FOR A COMPOSITION OF MATTERS.

To all whom it may concern:

Be it known that I, Ebenezer Whitney, of the city of Toronto, County of York, in the Province of Ontario, gentleman, am the administrator of the estate of Benjamin Browning, in his lifetime of the said city, gentleman, and that the said Benjamin Browning did invent a certain new and useful Composition of Matter to be Used for the Removal of Hair and Grease from Hides preparatory to tanning (for which I have obtained a patent in [here name the country], No. , dated , 190) * of which the following is a specification:

The composition of the said Benjamin Browning consists of the following ingredients, combined in the proportions stated, viz.:
Water substantially pure... ..500 gallons.
Unslacked lime... ..350 pounds.
Soda-ash (sodium carbonate)... ..100 pounds.
Saltpeter (nitrate of an alkali metal)... ..20 pounds
Sulphur (preferable flowers of sulphur)... ..10 pounds.

These ingredients are to be thoroughly mingled by agitation.

In using the above named composition the hides should first be freed from all salt and impurities, by soaking green hides one day and dry hides eight days. The hides so cleaned are then placed in the said solution, and allowed to remain in it forty-eight hours. They should then be removed from the solution and unhaired in the usual way.

*NOTE—If no foreign patent has been obtained, the words in parenthesis may be omitted.

By the use of the above composition the hair is speedily and thoroughly loosened, and the hides, while retaining all that portion of the substance which can be converted into leather, are at the same time entirely cleaned from grease and other substances which would prevent them from being tanned quickly.

I am aware that a composition consisting of soda-ash-water, lime, and sulphur has been used for the same purpose, and that a patent therefor was granted to C. D., July 10th, 190 , No. —. I am also aware that saltpeter has been used in depilatory processes; but I am not aware that all of the ingredients of my composition have been used together.

What I claim, and desire to secure by letters patent of the Dominion of Canada, is—

1. The herein-described composition of matter, consisting of water, unslacked lime, soda-ash, saltpeter, and sulphur, substantially as described and for the purpose specified.

2. The herein-described composition of matter for depilating and preparing hides for tanning, consisting of pure water five hundred gallons, unslacked lime three hundred and fifty pounds, soda-ash one hundred pounds, saltpeter twenty pounds, and flowers of sulphur ten pounds, substantially as described.

EBENEZER WHITNEY,
Administrator.

TORONTO, 1st September, 1903.

Signed in presence of

JOHN JAMES,
HENRY SMITH.

NOTE.—The specification including the claims must be in duplicate, and in addition a third copy of the claims alone must be furnished.

OATHS.

NOTE.—Where oaths are made out of Canada, and before a judge, the seal of the court, presided over by such judge, should be affixed, and if before a notary public, his seal should be affixed to such oaths.

When the invention has been assigned before the issue of Patent the affidavit must be made by the "inventor," not by the "assignee."

If the inventor is dead, the administrator or executor will make the affidavit that the person named as inventor was the inventor.

FORM 12.

BY SOLE INVENTOR FOR HIMSELF.

CANADA,
PROVINCE OF ONTARIO. }
County of York.

I, John Smith, of the city of Toronto, in the County of York, in the province of Ontario, carpenter, make oath and say, that I verily believe that I am the inventor of the new and useful improvements in Machines for Breaking Stone, described and claimed

in the specification relating thereto, and for which I solicit a Patent by my petition, dated 1st of September, 1903. And I further say that the same has not been patented to me, or to others with my knowledge or consent, except in the following countries* And I further say that the several allegations contained in the said petition are respectively true and correct.

JOHN SMITH.

Sworn before me, at the city of Toronto, the first day of September, 1903.

THOMAS BROWN.

J. P. for the County of York.

FORM 13.

JOINT INVENTORS.

CANADA,
PROVINCE OF ONTARIO. }
County of Carleton.

We, James Thomas, of the city of Ottawa, in the County of Carleton, in the Province of Ontario, in the Dominion of Canada, blacksmith, and George Robert Major, of the same place, tinsmith, do hereby severally make oath and say:

1st. I, this deponent, James Thomas, for myself do hereby make oath and say that I verily believe that I and the said George Robert Major are the inventors of the new and useful improvement in the art or process of separating smut from wheat, described and claimed in the specification in duplicate relating thereto, for which we solicit a Patent by our petition to the Commissioner of Patents, dated first September, 1903.* And I further say that the several allegations contained in the said petition are respectively true and correct.

2nd, I, this deponent, George Robert Major, for myself do hereby make oath and say, that I verily believe that I and the above named James Thomas are the inventors of the new and useful improvement in the art or process of separating smut from wheat, described and claimed in the specification in duplicate, relating thereto, for which we solicit a Patent by our petition to the Commissioner of Patents, dated first September, 1903;* and I further say that the several allegations contained in the said petition are respectively true and correct.

JAMES THOMAS.

GEORGE ROBERT MAJOR.

Sworn before me, by the said James Thomas and George Robert Major, the first day of September, 1903, at the city of Ottawa.

JOHN SMITH,

J. P. for the County of Carleton.

* Here insert, if previously patented, the country or countries in which it has been so patented, giving the date and number of each patent. If not previously patented, erase the words "except in the following countries" and insert the words "in any country." This foot note also refers to Form 13.

CANADIAN PATENT FORMS.

FORM 14.

. FOR A RE-ISSUE (INVENTOR).

CANADA.
 PROVINCE OF ONTARIO. }
County of Carleton. }

I, Thomas Brown, of the city of Ottawa, in the Province of Ontario, lumber manufacturer, make oath and say that the several allegations contained in my petition to the Commissioner of Patents, dated 1st of September, 1903, for a re-issue of the Patent granted to me on the 4th of September, 1902, for a new and useful improvement in churns, are respectively true and correct;

That I am the sole owner of the said Patent;

And that I am the inventor of the improvement set forth and claimed in the amended specification in duplicate relating thereto.

THOMAS BROWN.

Sworn before me, at the city of Ottawa, in the County of Carleton, in the Province of Ontario, this first day of September, 1903.

WILLIAM MILLS,

J. P. for the County of Carleton.

NOTE.—If the patent has not been exclusively assigned, the affidavit must state that the application for re-issue is made with the consent of the assignees.

FORM 15.

FOR A RE-ISSUE ASSIGNEE OF THE ENTIRE INTEREST).

CANADA.
 PROVINCE OF ONTARIO. }
County of Carleton. }

I, David Lane, of the town of Cobourg, in the County of Northumberland, Province of Ontario, tanner, make oath and say that the several allegations contained in my petition to the Commissioner of Patents, dated 1st September, 1903, for a re-issue of the Patent granted to Thomas Tardy, of the city of Ottawa, Province of Ontario, broom maker, for new and useful improvements in planing machines, are respectively true and correct;

That I am the sole owner of the said Patent;

And that Thomas Tardy was the inventor of the improvements set forth and claimed in the amended specification in duplicate relating thereto.

DAVID LANE.

Sworn before me, at the town of Cobourg, in the County of Northumberland, Province of Ontario, this first day of September, 1903.

THOMAS PARSONS,

J. P. for the County of Northumberland.

*NOTE.—See foot-note on preceding page.

FORM 16.

PETITION FOR CAVEAT.

To the Commissioner of Patents, Ottawa:

The undersigned, James Thompson, of New Edinburgh, in the County of Russell, in the Province of Ontario, school teacher, an intending applicant for a Patent, who has made certain new and useful improvements in locomotive engines, and has not perfected his invention, prays that his specification may be filed as a *Caveat* in the Patent Office. (Here describe the invention as far as possible, and refer to letters in drawing, as in specification given before in Form No. 9.)

JAMES THOMPSON.

FORM 17.

OATH FOR CAVEAT.

CANADA.

PROVINCE OF ONTARIO, }

County of Russell.

I, James Thompson, of New Edinburgh, in the County of Russell, Province of Ontario, school teacher, make oath and say that I am the inventor of the invention described in the foregoing specification, and that the allegations contained therein are respectively true and correct.

JAMES THOMPSON.

Sworn before me, at New Edinburgh, the first day of September, 1903.

ALEXANDER BUSH.

J: P. for the County of Russell.

ASSIGNMENTS.

FORM 18.

OF AN ENTIRE INTEREST (OR AN UNDIVIDED ONE-HALF INTEREST) IN
AN INVENTION BEFORE THE ISSUE OF PATENT.

In consideration of the sum of ten dollars, to me paid by Solomon Lang, of the city of Montreal, I do hereby sell and assign to the said Solomon Lang all (or an undivided half of all) my right, title and interest in and to my invention for new and useful improvements in planing machines, as fully set forth and described in the specification which I have signed preparatory to obtaining a Patent; and I do hereby authorize and request the Commissioner of Patents, to issue the said patent to the said Solomon Lang (or jointly to myself and the said Solomon Lang) in accordance with this assignment.

Witness my hand and seal this first day of September, 1903, at the City of Montreal.

THOMAS LORD [L.S.]

FORM 19.

OF AN ENTIRE INTEREST IN A PATENT.

In consideration of five hundred dollars, to me paid by Daniel Mullin, of the City of Montreal, in the Province of Quebec, I do hereby sell and assign to the said Nathan Wilcox, all my right, title and interest in and to the Patent of Canada, No. 23,460, for an improvement in locomotive head lights, granted to me July 30, 1902, the same to be held by and enjoyed by the said Nathan Wilcox to the full end of the term for which said Patent is granted, as fully and entirely as the same could have been held and enjoyed by me if this assignment and sale had not been made.

Witness my hand and seal this first day of September, 1903, at Montreal, Province of Quebec.

HORACE KIMBALL [L.S.]

FORM 20.

DISCLAIMER.

(To be in duplicate.)

I, William Lookup, of the city of Hull, in the County of Ottawa, in the Province of Quebec, having on the 1st September, 1903, obtained a Patent for the Dominion of Canada, for new and useful improvements in wagon brakes;

And through mistake, accident or inadvertence, without any wilful intent to defraud or mislead the public, I have made the claim in my specification too broad (or as being the inventor of a material or substantial part of the invention patented of which I was not the inventor, and to which I had no legal right):

I, therefore, hereby disclaim the part of the claim in the specification, which is in the following words:

"I also claim the use of the lever A, in combination with crank D, as described."

WILLIAM LOOKUP.

HULL, 30th September, 1903.

Signed in duplicate in the
presence of

DAVID BROWN.

FRANCIS LEMIEUX.

THE TRADE MARK and DESIGN ACT

NOTE

For Timber Marking Act, see page

For Rules and Forms under both Acts, see page

REVISED STATUTES OF CANADA, 1906.

CHAPTER 71.

AN ACT RESPECTING TRADE MARKS AND INDUSTRIAL DESIGNS.

SHORT TITLE.

1. Short Title.—This Act may be cited as "*The Trade Mark and Design Act*," R.S., c. 63, s. 1.

GENERAL INTERPRETATION.

2. Minister.—In this Act, unless the context otherwise requires, minister means the Minister of Agriculture.

DIVISION OF ACT.

3. Division of Act.—This Act is divided into three parts. Part I. applies only to Trade Marks. Part II. applies only to Industrial Designs, but does not apply to any design the proprietor of which is not a person resident within Canada, nor to any design which is not applied to a subject matter manufactured in Canada. Part III, is general and applies to both Trade Marks and Industrial Designs. R. S., c. 63, ss. 2, 24 and 36.

PART I.

TRADE MARKS.

INTERPRETATION.

4. Definitions.—In this Part, unless the context otherwise requires:

(a.) General trade mark means a trade mark used in connection with the sale of various articles in which the proprietor deals in his trade, business, occupation or calling generally;

(b.) Specific trade mark means a trade mark used in connection with the sale of a class of merchandise of a particular description. R. S., c. 63, s. 4.

5. What shall be deemed to be Trade Marks.—All marks, names, labels, brands, packages or other business devices, which are adopted for use by any person in his trade, business, occupation or calling, for the purpose of distinguishing any manufacture, product or article of any description manufactured, produced, compounded, packed or offered for sale by him—applied in any manner whatever either to such manufacture, product or article, or to any package, parcel, case, box or other vessel or receptacle of any description whatsoever containing the same, shall, for the purposes of this Act, be considered and known as trade marks. R. S., c. 63, s. 3.

6. As to Timber or Lumber.—Timber or lumber of any kind upon which labour has been expended by any person in his trade, business, occupation, or calling, shall, for the purposes of this Act, be deemed a manufacture, product or article. R. S., c. 63, s. 3.

SEAL.

7. Seal and its Use.—The Minister may cause a seal to be made for the purposes of this Act; and may cause to be sealed therewith trade marks and other instruments, copies of such trade marks and other instruments, proceeding from his office in relation to trade marks. R. S., c. 63, s. 7.

REGISTRATION.

8. Register to be Kept.—A register shall be kept at the Department of Agriculture for the registration of trade marks. R. S., c. 63, s. 5.

9. Registration by Minister.—Subject to the provisions of this Act, the Minister shall on application duly made in that behalf, register therein the trade mark of any proprietor applying for such registration in manner as provided by this Act in that behalf and by the rules and regulations made thereunder. R. S., c. 63, ss. 5 and 8.

10. Nature of Trade Mark to be Specified.—Every proprietor of a trade mark who applies for its registration shall state in his application whether the said trade mark is intended to be used as a general trade mark or as a specific trade mark. R. S., c. 63, s. 9.

11. Minister May Refuse to Register a Trade Mark in Certain Cases.—The Minister may refuse to register any trade mark:—

(a.) If he is not satisfied that the applicant is undoubtedly entitled to the exclusive use of such trade mark;

(b.) If the trade mark proposed for registration is identical with or resembles a trade mark already registered;

(c.) If it appears that the trade mark is calculated to deceive or mislead the public;

(d.) If the trade mark contains any immorality or scandalous figure;

(e.) If the so-called trade mark does not contain the essentials necessary to constitute a trade mark, properly speaking. 54-55 V., c. 35 s. 1.

12. Reference to the Exchequer Court.—The Minister may in any case in the last preceding section mentioned, if he thinks fit, refer the matter to the Exchequer Court of Canada, and in that event

such court shall have jurisdiction to hear and determine the matter, and to make an order determining whether and subject to what conditions, if any, registration is to be permitted. 54-55 V., c. 35, s. 1.

13. How Registration may be Effected.—Subject to the foregoing provisions, the proprietor of a trade mark may, on forwarding to the Minister a drawing and description in duplicate of such trade mark, and a declaration that the same was not in use to his knowledge by any other person than himself at the time of his adoption thereof together with the fee required by this Act in that behalf, and on otherwise complying with the provisions of this Act in relation to trade marks and with the rules and regulations made thereunder, have such trade mark registered for his own exclusive use.

2. Exclusive Right to Trade Mark.—Thereafter such proprietor shall have the exclusive right to use the trade mark to designate articles manufactured or sold by him. R.S., c. 63, ss. 3, 5, 8 and 13.

14. Certificate of Registration.—Upon any trade mark being registered under this Act, the Minister shall return to the proprietor registering the same one copy of the drawing and description forwarded to him with a certificate signed by the Minister to the effect that the said trade mark has been duly registered in accordance with the provisions of this Act; and the day, month and year of the entry of the trade mark in the register shall also be set forth in such certificate. R.S., c. 63, s. 13.

ASSIGNMENT.

15. Trade Marks may be Assigned.—Every trade mark registered in the office of the Minister shall be assignable in law;

2. Entry.—On the assignment being produced, and the fee by this Act prescribed therefore being paid, the Minister shall cause the name of the assignee, with the date of the assignment and such other details as he sees fit, to be entered in the margin of the register of trade marks on the folio where such trade mark is registered. R. S., c. 63, s. 16.

TIME LIMIT.

16. Duration of General Trade Mark.—A general trade mark once registered and destined to be the sign in trade of the proprietor thereof shall endure without limitation. R. S., c. 63, s. 14.

17. And of Specific Trade Mark.—A specific trade mark, when registered, shall endure for the term of twenty-five years, but may be renewed before the expiration of the said term by the proprietor thereof, or by his legal representative for another term of twenty-five years, and so on from time to time; but every such renewal shall be registered before the expiration of the current term of twenty-five years. R. S., c. 63, s. 14.

CANCELLATION.

18. Cancellation of Trade Mark.—Any person who has registered a trade mark may petition for the cancellation of the same, and the Minister may, on receiving such petition, cause the said trade mark to be so cancelled;

2. **Effect of Cancellation.**—Such trade mark shall, after such cancellation, be considered as if it had never been registered under the name of the said person. R. S., c. 63, s. 15.

RIGHT OF ACTION.

19. **Suit by Proprietor.**—An action or suit may be maintained by any proprietor of a trade mark against any person who uses the registered trade mark of such proprietor or any fraudulent imitation thereof, or who sells any article bearing such trade mark or any such imitation thereof, or contained in any package of such proprietor or purporting to be his contrary to the provisions of this Act. R. S., c. 63, s. 18.

20. **No Suit Unless Trade Mark is Registered.**—No person shall institute any proceeding to prevent the infringement of any trade mark, unless such trade mark is registered in pursuance of this Act. R. S., c. 63, s. 19.

OFFENCES AND PENALTIES.

21. **Unlawful Use of Trade Mark.**—Every person, other than the proprietor of any trade mark who, with intent to deceive and to induce any person to believe that any article of any description whatsoever was manufactured, produced, compounded, packed or sold by the proprietor of such trade mark,—

(a.) Marks any such article with any trade mark registered under the provisions of this act, or with any part of such trade mark, whether by applying such trade mark or any part thereof to the article itself, or to any package or thing containing such article, or by using any package or thing so marked which has been used by the proprietor of such trade mark; or

(b.) Knowingly sells or offers for sale any such article marked with such trade mark, or with any part thereof;

Penalty.—Is guilty of an indictable offence and liable, for each offence, to a fine not exceeding one hundred dollars, and not less than twenty dollars,—

2. **To Whom Payable.**—Such fine shall be paid to the proprietor of such trade mark, together with the costs incurred in enforcing and recovering the same.

3. **Suit by Proprietor or his Agent.**—Every complaint under this section shall be made by the proprietor of such trade mark, or by some one acting on his behalf, and thereunto duly authorized. R. S., c. 63, s. 17.

WARRANTY UPON SALE.

22. **Warranty that Trade Mark is Genuine.**—Upon the sale or in the contract for the sale of any goods to which a trade mark, or mark, or trade description has been applied, the vendor shall, unless the contrary is expressed in some writing, signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee, be deemed to warrant that the mark is a genuine trade mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of Part VII of the Criminal Code. 51 V., c. 41, s. 18.

PART II.

INDUSTRIAL DESIGNS.

REGISTRATION.

23. Register of, to be Kept.—The Minister shall cause to be kept, a book to be called "The Register of Industrial Designs," for the registration therein of industrial designs. R. S., c. 63, s. 22.

24. Drawing and Description to be Deposited.—The proprietor applying for the registration of any design shall deposit with the Minister a drawing and description in duplicate of the same, together with a declaration that the same was not in use, to his knowledge, by any other person than himself at the time of his adoption thereof. R. S., c. 63, s. 22.

25. Examination Prior to Registration.—On receipt of the fee prescribed by this Act in that behalf, the Minister shall cause any design for which the proprietor has made application for registry to be examined to ascertain whether it resembles any other design already registered. R. S., c. 63, s. 22.

26. Registration of Design.—Proviso.—The Minister shall register the design, if he finds that it is not identical with, or does not so closely resemble any other design already registered as to be confounded therewith, and he shall return to the proprietor thereof one copy of the drawing and description, with the certificate required by this Part; Provided that he may refuse, subject to appeal to the Governor in Council, to register such designs as do not appear to him to be within the provisions of this Part or any design which is contrary to public morality or order. R. S., c. 63, ss. 22 and 27.

27. Certificate of Minister.—On the copy of the drawing and description returned to the person registering, a certificate shall be given, signed by the Minister or the Deputy of the Minister of Agriculture, to the effect that such design has been duly registered in accordance with the provisions of this Act.

2. Particulars thereof.—Such certificate shall show the date of registration including the day, month and year of the entry thereof in the proper register, the name and address of the registered proprietor, the number of such design and the number or letter employed to denote or correspond to the registration.

3. Certificate to be Evidence of Contents.—The said certificate, in the absence of proof to the contrary, shall be sufficient evidence of the design, of the originality of the design, of the name of the proprietor, of the person named as proprietor being proprietor, of the commencement and term of registry, and of compliance with the provisions of this Act. R. R., c. 63, ss. 22 and 28.

28. Who May Register.—If the author of any design shall, for a good and valuable consideration, have executed the same for some other person, such other person shall alone be entitled to register it. R. S., c. 63, s. 25.

EXCLUSIVE RIGHT.

29. Registration Gives.—An exclusive right for an industrial design may be acquired by registration of the same under this Part. R. S., c. 63, s. 29.

30. Duration of Right.—Renewal.—Proviso.—Such exclusive right shall be valid for the term of five years; but may be renewed at or before the expiration of the said term of five years, for a further period of five years or less on payment of the fee in this Act prescribed for extension of time. Provided that the whole duration of the exclusive right shall not exceed ten years in all. R. S., c. 63, s. 29.

31. Using Design Without Leave.—Unlawful.—During the existence of such exclusive right, whether of the entire or partial use of such design, no person shall without the license in writing of the registered proprietor, or, if assigned, of his assignee, apply for the purposes of sale such design or a fraudulent imitation thereof to the ornamenting of any article of manufacture or other article to which an industrial design may be applied or attached, or publish, sell or expose for sale or use, any such article as aforesaid to which such design or fraudulent imitation thereof has been applied. R. S., c. 63, s. 31.

PROPRIETORSHIP.

32. Who shall be Deemed Proprietor.—The author of any design shall be considered the proprietor thereof unless he has executed the design for another person for a good or valuable consideration, in which case such other person shall be considered the proprietor;

2. Acquired Right.—The right of such other person to the property shall only be co-extensive with the right which he has acquired. R. S., c. 63, s. 25.

ASSIGNMENTS.

33. Design to be Assignable.—Every design shall be assignable in law, either as to the whole interest or any undivided part thereof, by an instrument in writing, which shall be recorded in the office of the Minister, on payment of the fees prescribed by this Act in that behalf;

2. Right to use Design.—Every proprietor of a design may grant and convey an exclusive right, to make, use and vend, and to grant to others the right to make, use and vend such design, within and throughout Canada, or any part thereof, for the unexpired term of its duration, or any part thereof,—

3. License.—Such exclusive grant and conveyance shall be called a license, and shall be recorded in like manner and time as assignments. R. S., c. 63, s. 30.

PROTECTION OF DESIGN.

34. Conditions of Registration.—In order that any design may be protected, it shall be registered before publication and after registration the name of the proprietor shall appear upon the article to which his design applies by being marked, if the manufacture is a woven fabric, on one end thereof, together with the letters "Rd."; and if the manufacture is of any other substance, with the letters "Rd.," and the year of the registration at the edge or upon any convenient part thereof:

2. How Mark Shall be Applied.—The mark may be put upon the manufacture by making it on the material itself, or by

attaching thereto a label with the proper mark thereon. R. S., c. 63, s. 24.

RIGHT OF ACTION.

35. Suit by Proprietor.—If any person applies or imitates any design for the purpose of sale, being aware that the proprietor of such design has not given his consent to such application, an action may be maintained by the proprietor of such design against such person for the damages, such proprietor has sustained by reason of such application or imitation. R. S., c. 63, s. 35.

OFFENCES AND PENALTIES.

36. Violation of this Part.—Every person who in violation of the provisions of this Part, during the existence of the exclusive right acquired for any industrial design by the registration of the same under this Part, whether of the entire or partial use of such design, without the license in writing of the registered proprietor, or, if assigned, of his assignee,—

(a.) **By Applying Design.**—For the purposes of sale, applies or attaches such design or a fraudulent imitation thereof to the ornamenting of any article of manufacture or other article to which an industrial design may be applied or attached; or

(b.) **By Selling Article with Design Improperly Applied.**—Publishes, sells, or exposes for sale or for use any article of manufacture or other article to which an industrial design may be applied or attached and to which such design or fraudulent imitation thereof has been applied or attached;

Penalty.—Shall forfeit a sum not exceeding one hundred and twenty dollars, and not less than twenty dollars, to the proprietor of the design so applied.

2. **Recovery.**—such sum shall be recoverable, with costs, on summary conviction under Part XV of the Criminal Code by the registered proprietor or assignee. R. S., c. 63, s. 31.

37. Falsely Representing an Article as Having a Registered Design.—Every person who;

(a.) Places the word “registered” or the letters “Rd.” upon any article for which no design has been registered under this Part, or upon any article for the design of which the exclusive right has expired; or

(b.) Advertises for sale as a registered article, any article for which no design has been registered, or for the design of which the exclusive right has expired; or

(c.) Unlawfully sells, publishes or exposes for sale any article for which no design has been registered, or for the design of which the exclusive right has expired and on which the word “registered,” or the letters “Rd.” have been placed, knowing the said article to have been fraudulently marked, or the exclusive right to such design to have expired;

Penalty.—Shall be liable to a penalty not exceeding thirty dollars, and not less than four dollars;

2. **Recovery.**—Such penalty shall be recoverable on summary conviction under Part XV of the Criminal Code with costs, by any person who sues for the same;

3. **Application.**—A moiety of such penalty shall belong to the

prosecutor, and the other moiety to His Majesty, for the public uses of Canada. R. S., c. 63, s. 32.

LIMITATION OF ACTIONS.

38. Time.—All suits under this Part, and all proceedings thereunder for offences, shall be brought within twelve months from the cause of action or commission of the offence, and not afterwards. R. S., c. 63, s. 36.

PART III.

GENERAL.

RULES, REGULATIONS AND FORMS.

39. Minister may Make Rules and Adopt Forms.—The Minister may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act respecting trade marks and industrial designs, and such rules, regulations and forms circulated in print for the use of the public, shall be deemed to be correct for the purposes of this Act;

2. Document Deemed Valid.—All documents executed according to the said rules, regulations and forms and accepted by the Minister, shall be deemed to be valid so far as relates to official proceedings under this Act. R. S., c. 63, ss. 6 and 23.

CLERICAL ERRORS.

40. Correction.—Clerical errors which occur in the drawing up or copying of any instrument, under this Act, respecting trade marks or industrial designs, shall not be construed as invalidating the same, and when discovered may be corrected under the authority of the Minister. R. S., c. 63, ss. 21 and 38.

INSPECTION.

41. Inspection of Registers.—Any person may be allowed to inspect the register of trade marks or the register of industrial designs;

2. Copies.—The Minister may cause copies of representations of trade marks or copies of representations of industrial designs to be delivered on the applicant for the same paying the fee or fees prescribed by this Act on that behalf. R.S., c. 63, ss. 20 and 37.

PROCEDURE AS TO RECTIFICATION AND ALTERATION.

42. Exchequer Court may Rectify Entries.—The Exchequer Court of Canada may, on the information of the Attorney General, or at the suit of any person aggrieved by any omission, without sufficient cause, to make any entry in the register of trade marks or in the register of industrial designs or by any entry made without sufficient cause in any such register, make such order for making, expunging or varying any entry in any such register, as the court thinks fit, or the court may refuse the application.

2. **Costs.**—In either case, the Court may make such order with respect to the costs of the proceedings as the Court thinks fit.

3. **Questions to be Decided.**—The court may, in any proceedings, under this section, decide any question that may be necessary or expedient to decide for the rectification of any such register. 54-55, V., c. 35, s. 1.

43. Trade Mark or Design may be Corrected by the Court.—The registered proprietor of any registered trade mark or industrial design may apply to the Exchequer Court of Canada for leave to add to or alter any such trade mark or industrial design in any particular, not being an essential particular, and the court may refuse to grant leave on such terms as it may think fit;

2. **Notice to Minister.**—Notice of any intended application to the court under this section for leave to add to or alter any such trade mark or industrial design shall be given to the Minister, and he shall be entitled to be heard on the application. 54-55, V., c. 35, s. 1.

44. Consequent Rectification of Register.—A certified copy of any order of the court for the making, expunging or varying of any entry in the register of trade marks or in the register of industrial designs or for adding to or altering any registered trade mark or registered industrial design shall be transmitted to the Minister by the registrar of the court, and such register shall thereupon be rectified or altered in conformity with such order, or the purport or the order otherwise duly entered therein, as the case may be. R. S., c. 63, s. 34; 54-55 V., c. 35, s. 1.

EVIDENCE.

45. No Proof of Signature of Certificate Required.—Every certificate under this Act, that any trade mark or industrial design has been duly registered in accordance with the provisions of this Act, which purports to be signed by the Minister or the Deputy Minister of Agriculture shall, without proof of the signature, be received in all courts in Canada as *prima facie* evidence of the facts therein alleged. R. S., c. 63, ss. 13, 22 and 28.

FEES.

46. Table of Fees.—The following shall be the fees in respect to registration under this Act which shall be paid to the Minister in advance, that is to say:—

On every application to register a general trade mark, including certificate.. . . .	\$30 00
On every application to register a specific trade mark, including certificate.. . . .	25 00
On every application for the renewal of the registration of a specific trade mark, including certificate.. . . .	20 00
On every application to register a design including certificate	5 00
On every application as to a design for an extension of time, for each year of such extension, including certificate.. . . .	2 00
For a copy of every certificate of registration, separate from the return of the duplicate	1 00

For the recording of an assignment	2 00
For copies of documents, not above mentioned, for every hundred words or for every fraction thereof.. . .	0 50
For each copy of any drawing or emblematic trade mark, and for each copy of any drawn copy of an industrial design—the reasonable expense of preparing the same. R.S., c. 63, ss. 10 and 26.	

47. Payable to Minister of Finance.—All fees received by the Minister under this Act shall be paid over by him to the Minister of Finance. R. S., c. 63, ss. 10 and 26.

48. Return of Fee, if Application is Refused.—In case any trade mark or industrial design in respect of which application for registry is made under this Act shall not be registered, all fees paid the Minister for registration shall be returned to the applicant or his agent, less in the case of trade marks, the sum of five dollars, and in case of industrial designs, the sum of two dollars which shall be retained as compensation for office expenses. R. S., c. 63, ss. 10 and 26.

THE TIMBER MARKING ACT

REVISED STATUTES OF CANADA 1906

CHAPTER 72.

AN ACT RESPECTING THE MARKING OF TIMBER.

SHORT TITLE.

1. Short Title.—This Act may be cited as the Timber Marking Act.

MARKS AND REGISTRATION.

Persons Engaged in Lumbering to Select, Register and Use Proper Marks.—Every person engaged in the business of lumbering or getting out timber, and floating or rafting the same on the inland waters of Canada, within the Provinces of Ontario and Quebec, shall, within one month after he engages therein, select a mark or marks, and cause such mark or marks to be registered in the manner hereinafter provided. R. S., c. 64, s. 1.

3. Minister of Agriculture to Register Marks, and Deliver Certificates.—The Minister of Agriculture shall keep at the Department of Agriculture a book to be called the "Timber Mark Register," in which any person engaged in the business of lumbering or getting out timber as aforesaid, may have his timber mark registered upon depositing with the Minister a drawing or impression and description in duplicate of such timber mark, together with a declaration that the same is not and was not in use, to his knowledge, by any person other than himself at the time of his adoption thereof;

2. On Certain Conditions Certificates shall be Evidence.—The Minister, on receipt of the fee hereinafter provided, shall cause the said timber mark to be examined, to ascertain whether it resembles any other mark already registered; and if he finds that such mark is not identical with, or does not so closely resemble any other timber mark already registered as to be confounded therewith, he shall register the same, and shall return to the proprietor thereof one copy of the drawing and description, with a certificate signed by the Minister or the deputy Minister of Agriculture, to the effect that the said mark has been duly registered in accordance with the provisions of this Act; and such certificate shall further set forth the day, month and year of the entry thereof, in the proper register; and every such certificate shall be received in all courts in Canada as evidence of the facts therein alleged, without proof of the signature. R. S., c. 64, s. 2.

4. Exclusive Right to Use Registered Mark.—The person who registers such timber mark shall thereafter have the exclusive right to use the same, to designate the timber got out by him and floated or rafted as aforesaid; and he shall put the same in a conspicuous place on each log or piece of timber so floated or rafted. R. S., c. 64, ss. 1 and 3.

5. Marks May Be Cancelled.—Any person who has registered a timber mark may petition for the cancellation of the same, and the Minister may, on receiving such petition, cause the said mark to be cancelled; and the same shall, after such cancellation, be considered as if it had never been registered under the name of the said person. R. S., c. 64, s. 4.

6. Registered Marks Assignable and How.—Every timber mark registered at the Department of Agriculture shall be assignable in law; and on the production of the assignment and the payment of the fee hereinafter mentioned, the Minister shall cause the name of the assignee, with the date of the assignment and such other details as he sees fit, to be entered on the margin of the register of timber marks on the folio where such mark is registered. R. S., c. 64, s. 5.

7. Different Marks to be Used.—If any person makes application to register, as his own, any timber mark which is already registered, the Minister shall give notice of the fact to such person, who may then select some other mark and forward the same for registration. R. S., c. 64, s. 6.

8. Prohibition Against Using Another Person's Mark.—No person, other than the person who has registered the same, shall mark any timber of any description with any mark registered under the provisions of this Act, or with any part of such mark. R. S., c. 64, s. 7.

FEEs.

9. Table of Fees.—The following fees shall be payable, that is to say:—

On every application to register a timber mark, including certificate	\$2 00
For each certificate of registration not already provided for	0 50
For each copy of any drawing,—the reasonable expenses of preparing the same.	
For recording any assignment	1 00

2. Such fees shall be paid over by the Minister of Agriculture to the Minister of Finance and shall form part of the Consolidated Revenue Fund of Canada. R. S., c. 64, s. 8.

10. Minister May Make Rules and Adopt Forms.—The Minister may, from time to time, subject to the approval of the Governor in Council, make rules and regulations and adopt forms for the purposes of this Act. R. S., c. 64, s. 9.

OFFENCES AND PENALTIES.

11. Failing to Select, Register and Use Proper Marks by Lumberman, etc., Penalty.—Every person engaged in the business of lumbering or getting out timber, and floating or rafting the same on the inland waters of Canada, within the provinces of Ontario and Quebec, who fails within one month after he engages therein, to select a mark or marks, and cause such mark or marks to be registered in the manner hereinbefore provided, or to put the same in a conspicuous place on each log or piece of timber so floated or rafted, shall incur a penalty of fifty dollars. R. S., c. 64, s. 1.

12. Marking Timber with a Mark Registered by Another. —Penalty.—Every person, other than the person who has registered the same, who marks any timber of any description with any mark registered under the provisions of this Act, or with any part of such mark, shall, on summary conviction before two justices of the peace, be liable for each offence, to a penalty not exceeding one hundred dollars and not less than twenty dollars,—which amount shall be paid to the proprietor of such mark, together with the costs incurred in enforcing and recovering the same:

2. **Who May Complain.**—Every complaint of violation of this section shall be made by the proprietor of such timber mark, or by some one acting on his behalf, and thereunto duly authorized. R. S., c. 64, s. 7.

RULES AND FORMS
OF THE
DEPARTMENT OF AGRICULTURE
UNDER
THE TRADE MARK AND DESIGN ACT
AND THE
TIMBER MARKING ACT

Approved by the Governor in Council, on the 25th day of October, 1907

RULES.

I.

There is no necessity for any personal appearance at the Department of Agriculture, unless specially called for by order of the Minister or the Deputy, every transaction being carried on by writing.

II.

In every case the applicant or depositor of any paper is responsible for the merits of his allegations and of the validity of the instruments furnished by him or his agent.

III.

The correspondence is carried on with the applicant, or his agent, but with one person only and will be conveyed to the Canadian mail free of charge.

IV.

All papers are to be clearly and neatly written on foolscap paper, and every word of them is to be distinctly legible.

Drawing are not to exceed thirteen inches in length and eight inches in width.

V.

An application for registration shall be signed by the applicant or by an agent duly authorized.

A partner may sign for a firm. A director or secretary or other principal officer of a company may sign for the company.

VI.

All communications to be addressed in the following words:—
*To the Minister of Agriculture, (Trade Mark and Copyright Branch),
 Ottawa.*

VII.

As regards proceedings not specially provided for in the following forms, any form being conformable to the letter and spirit of the law will be accepted, and if not so conformable will be returned for correction.

VIII.

A copy of the Act and the Rules with a particular section marked, sent to any person making an enquiry, is intended as a respectful answer by the office.

IX.

Information as to subsisting registrations will not be furnished by the office, the registers and indexes being open for inspection free of charge.

 FORMS

FORM I.

DOMINION OF CANADA.

The Trade Mark and Design Act.

Application for registration of a General Trade Mark. (To be made in duplicate.)

I, (or we) _____ of the _____
 of _____ in the _____ of
 hereby request you to register in the name of
 a General Trade Mark, which I (or we) verily believe is mine
 (or ours), on account of having been the first to make use of the
 same (or on account of having acquired it from _____ who,
 I [or we] verily believe, was [or were] the first to make use of the
 same). I [or we] hereby declare that the said General Trade Mark
 was not in use to my [or our] knowledge by any other person than
 myself [or ourselves] at the time of my [or our] adoption thereof.
 The said General Trade Mark consists of (*verbal description of the
 Trade Mark*).

A drawing of the said General Trade Mark is hereunto annexed.

Signed at _____ this _____ day of
 19 _____, in the presence of the two undersigned witnesses.

Witnesses:

To the Minister of Agriculture,
 Ottawa.

FORM II.

DOMINION OF CANADA.

The Trade Mark and Design Act.

Application for registration of a Specific Trade Mark. (To be made in duplicate.)

I, [or we] of the of
of in the of
hereby request you to register in the name of a
Specific Trade Mark to be used in connection with the sale of
which I [or we] verily believe is mine [or ours] on
account of having been the first to make use of the same (or, on
account of having acquired it from who, I [or we]
verily believe, was [or were] the first to make use of the same).

I [or we] hereby declare that the said Specific Trade Mark
was not in use to my [or our] knowledge by any
other person than myself [or ourselves] at the time of my [or our]
adoption thereof. The said Specific Trade Mark consists of (*verbal
description of the Trade Mark*).

A drawing of the said Specific Trade Mark is hereunto annexed.

Signed at this day of

19 , in the presence of the two undersigned witnesses.

Witnesses:

To the Minister of Agriculture,
Ottawa.

FORM III.

DOMINION OF CANADA.

The Trade Mark and Design Act.

Application for registration of an Industrial Design. (To be made in duplicate.)

I, [or we] of of
in the province of Dominion of Canada, hereby request
you to register in the name of an
Industrial Design of a of which I [or we] am [or are]
the proprietor (s)

I [or we] declare that the said Industrial Design was not in use to
my [or our] knowledge by any other person than myself [or our-
selves] at the time of my [or our] adoption thereof. The said
Industrial Design consists of (*Verbal description of the Industrial
Design*).

A drawing of the said Industrial Design is hereunto annexed.

Signed at this day of

19 , in the presence of the two undersigned witnesses.

Witnesses:

The Minister of Agriculture,
Ottawa.

FORM IV.

DOMINION OF CANADA.

The Timber Marking Act.

Application for registration of a Timber Mark. (To be made in duplicate.)

I. [or we] of the of
in the of hereby request you to
register in the name of a Timber Mark
which I [or we] hereby declare is not and was not in use to my
[or our] knowledge by any person other than myself [or ourselves]
at the time of my [or our] adoption thereof. The said Timber
Mark consists of

(*Verbal description of the Timber Mark*).

A drawing of the said Timber Mark is hereunto annexed.

Signed at this day of

19 , in the presence of the two undersigned witnesses.

Witnesses:

The Minister of Agriculture,
Ottawa.

THE INTEREST ACT

Revised Statutes of Canada. 1906.

CHAPTER 120.

AN ACT RESPECTING INTEREST.

SHORT TITLE.

1. **Short Title.**—This Act may be cited as *The Interest Act*,

RATE OF INTEREST.

2. **No restriction as to except as provided by statute.**—Except as otherwise provided by this or by any other Act of the Parliament of Canada, any person may stipulate for, allow and exact, on any contract or agreement whatsoever, any rate of interest or discount which is agreed upon. R. S., c. 127, s. 1.

3. **Five per centum to be the rate if no other provision.**—Except as to liabilities existing immediately before the seventh day of July, one thousand nine hundred, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, the rate of interest shall be five per centum per annum. R. S., c. 127, s. 1; 63-64 V., c. 29, s. 1.

4. **When Rate not Per Annum, Contracted for, only Five Per Centum Recoverable unless Equivalent Rate Per Annum, Except as to Mortgages on Real Estate.**—Whenever any interest is, by the terms of any written or printed contract stated whether under seal or not, made payable at a rate or percentage per day, week, month, or at a rate or percentage for any period less than a year, no interest exceeding the rate or percentage of five per cent. per annum shall be chargeable, payable or recoverable on any part of the principal money unless the contract contains an express statement of the yearly rate or percentage of interest to which such other rate or percentage is equivalent. 60-61 V., c. 8, ss. 2 and 4; 63-64 V. ic., c. 29, s. 1.

Recovery of Sums Paid Otherwise.—If any sum is paid on account of any interest not chargeable, payable or recoverable under the last preceding section, such sum may be recovered back or deducted from any principal or interest payable under such contract.

INTEREST ON MONEYS SECURED BY MORTGAGE ON REAL ESTATE.

6. **No Interest Recoverable in Certain Cases unless the Mortgage States Actual Rate.**—Whenever any principal money or interest secured by mortgage of real estate is, by the same, made

payable on the sinking fund plan, or on any plan under which the payments of principal money and interest are blended, or on any plan which involves an allowance of interest on stipulated repayments, no interest whatever shall be chargeable, payable or recoverable, on any part of the principal money advanced, unless the mortgage contains a statement showing the amount of such principal money and the rate of interest chargeable thereon, calculated yearly or half-yearly, not in advance. R. S., c. 127, s. 3.

7. No Rate Recoverable beyond that so Stated.—Whenever the rate of interest shown in such statement is less than the rate of interest which would be chargeable by virtue of any other provision, calculation or stipulation in the mortgage, no greater rate of interest shall be chargeable, payable or recoverable, on the principal money advanced, than the rate shown in such statement. R. S., c. 127, s. 4.

8. No Fine, etc., Allowed on Payments in Arrears—Proviso.—No fine or penalty or rate of interest shall be stipulated for, taken, reserved or exacted on any arrears of principal or interest secured by mortgage of real estate, which has the effect of increasing the charge on any such arrears beyond the rate of interest payable on principal money not in arrears; Provided that, nothing in this section contained shall have the effect of prohibiting a contract for the payment of interest on arrears of interest or principal at any rate not greater than the rate payable on principal money not in arrear. R. S., c. 127, s. 5.

9. Overcharge may be Recovered Back.—If any sum is paid on account of any interest, fine or penalty not chargeable, payable and recoverable under the three sections last preceding, such sums may be recovered back, or deducted from any other interest, fine or penalty chargeable, payable or recoverable on the principal. R. S., c. 127, s. 6.

10. No further Interest Payable after Five Years on Certain Conditions.—Whenever any principal money or interest secured by mortgage of real estate is not, under the terms of the mortgage, payable till a time more than five years after the date of the mortgage, then, if at any time after the expiration of such five years, any person liable to pay or entitled to redeem the mortgage tenders or pays, to the person entitled to receive the money, the amount due for principal money and interest to the time of payment, as calculated under the four sections last preceding, together with three months' further interest in lieu of notice, no further interest shall be chargeable, payable or recoverable at any time thereafter on the principal money or interest due under the mortgage; Provided that, nothing contained in this section shall apply to any mortgage upon real estate given by a joint stock company or other corporation, nor to any debenture issued by any such company or corporation, for the payment of which security has been given by way of mortgage on real estate. R. S., c. 127, s. 7; 53 V., c. 34, s. 1.

11. Preceding Sections Apply only to Mortgages Since July 1, 1880.—The provisions of the five sections last preceding

shall apply only to moneys so secured by mortgage executed after the first day of July, in the year one thousand eight hundred and eighty. R. S., c. 127, s. 8.

BRITISH COLUMBIA, SASKATCHEWAN, ALBERTA AND THE TERRITORIES.

12. Application. — The three sections next following apply to the Provinces of British Columbia, Saskatchewan and Alberta and to the Northwest Territories and the Yukon Territory only. 52 V., c. 31, s. 1; 5, 7, 58 V., c. 22, s. 1.

13. Interest on Judgment Debts.—Every judgment debt shall bear interest at the rate of five per cent. per annum until the same is satisfied. 63-64 Vic., c. 29, s. 1. 52 V., c. 31, s. 2. 57-58 V., c. 22, s. 2; 63-64 V., c. 29, s. 1.

14. From what Time Calculated.—Unless it is otherwise ordered by the court, such interest shall be calculated from the time of the rendering of the verdict or of giving the judgment, as the case may be, notwithstanding that the entry of judgment upon the verdict or upon the giving of the judgment has been suspended by any proceedings either in the same court or in appeal. 52 V., c. 31, s. 3. 57-58 V., c. 22, s. 3.

15. Judgment Debt Defined.—Any sum of money or any costs, charges or expenses shall be made payable by or under judgment, decree rule or order of any court whatsoever in any civil proceeding shall for the purposes of this Act be deemed a judgment debt. 52 V. c. 31, s. 4; 57-58 V., c. 22, s. 4.

The Money Lenders Act

Revised Statutes of Canada, 1906.

CHAPTER 122.

AN ACT RESPECTING MONEY LENDERS.

1. Short Title.—That this Act may be cited as *The Money-Lenders Act*. 6 E. VII., c. 32, s. 1.

2. Definition.—Money-Lender.—"Money-lender" in this Act includes 6 E. VII., c. 32, s. 1. Any person who carries on the business of money-lending, or advertises, or announces himself, or holds himself out in any way, as carrying on that business, and who makes a practice of lending money at a higher rate than ten per cent. per annum, but does not comprise registered pawnbrokers as such. 6 E. VII., c. 32, s. 2.

3. Not Applicable to Yukon.—This Act shall not apply to the Yukon Territory. 6 E. VII., c. 32, s. 11.

4. Limitation as to Small Loans.—This Act shall not apply to any loan or transaction in which the whole interest or discount charged or collected in connection therewith does not exceed the sum of fifty cents. 6 E. VII., c. 32, s. 10.

5. Act not to Increase Existing Rate of Interest.—Nothing in this Act shall operate to increase the rate of interest that may be recovered in any case where by law the rate is fixed at less than twelve per centum per annum. 6 E. VII., c. 32, s. 8.

6. Interest on Negotiable Instruments, Contracts, etc., Limited to 12 per Cent. per Annum.—And to 5 per Cent. after Judgment Rendered.—Notwithstanding the provisions of the Interest Act, no money-lender shall stipulate for allow or exact on any negotiable instrument, contract or agreement, concerning a loan of money, the principal of which is under five hundred dollars, a rate of interest or discount greater than twelve per centum per annum; and the said rate of interest shall be reduced to the rate of five per centum per annum from the date of judgment in any suit, action or other proceeding for the recovery of the amount due. 6 E. VII., c. 32, s. 3.

7. Powers to Court for Inquiry into Transaction and Relief of Debtor.—Lender to Repay Excess.—In any suit, action or other proceeding concerning a loan of money by a money-lender the principal of which was originally under five hundred dollars, wherein it is alleged that the amount of interest paid or claimed exceeds the rate of twelve per centum per annum, including the charges for discount, commission, expenses, inquiries, fines, bonus, renewals, or any other charges, but not including taxable conveyancing charges, the court may re-open the transaction and take an account between the parties and may, notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation, re-open any

account already taken between the parties, and relieve the person under obligation to pay from payment of any sum in excess of the said rate of interest; and if any such excess has been paid, or allowed in account, by the debtor, may order the creditor to repay it, and may set aside, either wholly or in part, or revise, or alter, any security given in respect of the transaction. 6 E. VII, c. 32, s. 4.

8. Exception in Case of Negotiable Instrument.—The *bona fide* holder, before maturity, of a negotiable instrument discounted by a preceding holder at a rate of interest exceeding that authorized by this Act, may nevertheless recover the amount thereof, but the party discharging such instrument may reclaim from the money-lender any amount paid thereon for interest or discount in excess of the amount allowed by this Act. 6 E. VII, c. 32, s. 5.

9. Act to Apply to Existing Contracts.—And to Existing Judgments.—The principal of any sum of money, originally under five hundred dollars, due and payable before the thirteenth day of July, one thousand nine hundred and six, in virtue of any negotiable instrument given to a money-lender or of any contract or agreement entered into with such money-lender in respect of money lent by him, shall not, from and after the said date, bear a rate of interest greater than twelve per centum per annum; and from and after the said date no rate of interest greater than five per centum per annum shall be recovered upon any judgment, rendered before the said date, upon any such negotiable instrument, contract, or agreement for the payment of money lent by a money-lender, and which allows a greater rate than five per centum per annum. 6 E. VII, c. 32, s. 6.

10. As to Instruments and Contracts not yet Matured.—In the case of any such negotiable instrument made before the thirteenth day of July, one thousand nine hundred and six, and maturing after said date, and in the case of any such contract or agreement made before the said date and to be performed there after the said date, the foregoing provisions of this Act shall apply only from the date of maturity or performance as the case may be. 6 E. VII, c. 32, s. 7.

11. Penalty.—Every money-lender is guilty of an indictable offence and liable to imprisonment for a term not exceeding one year, or to a penalty not exceeding one thousand dollars, who lends money at a rate of interest greater than that authorized by this Act. 6 E. VII, c. 32, s. 7.

The Lord's Day Act

Revised Statutes of Canada, 1906

CHAP. 153.

An Act respecting the Lord's Day.

HIS Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

SHORT TITLE.

1. Short Title.—This Act may be cited as the Lord's Day Act.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Lord's Day" means the period of time which begins at twelve o'clock on Saturday afternoon and ends at twelve o'clock on the following afternoon;

(b.) "Person" has the meaning which it has in the Criminal Code.

(c.) "Vessel" includes any kind of vessel or boat used for conveying passengers or freight by water;

(d.) "Railway" includes steam railway, electric railway, street railway and tramway;

(e.) "Performance" includes any game, match, sport, contest, exhibition or entertainment;

(f.) "Employer" includes every person to whose orders or directions any other person is by his employment bound to conform;

(g.) "Provincial Act" means the charter of any municipality or any public Act of any province whether passed before or since Confederation. 6 E. VII., c. 27, s. 1.

3. Dominion Railways.—Nothing herein shall prevent the operation on the Lord's Day for passenger traffic by any railway company incorporated by or subject to the legislative authority of the Parliament of Canada of its railway where such operation is not otherwise prohibited.

2. Operation of provincial railways.—Nothing herein shall prevent the operation on the Lord's Day for passenger traffic of any railway subject to the legislative authority of any province unless such railway is prohibited by provincial authority from so operating. 6 E. VII., c. 27, s. 13.

COMMENCEMENT.

4. Commencement of Act.—This Act shall come into force on the first day of March, one thousand nine hundred and seven. 6 E. VII., c. 27, s. 16.

PROHIBITIONS.

No Sales to be Made or Business or Work Done on Lord's Day.—It shall not be lawful for any person on the Lord's Day, except as provided herein or in any Provincial Act or law now or hereafter in force, to sell or offer for sale or purchase any goods, chattels, or other personal property, or any real estate, or to carry on or transact any business of his ordinary calling, or in connection with such calling, or for gain to do, or employ any other person to do, on that day any work, business, or labour. 6 E. VII, c. 27, s. 2.

6. Substitution of Another Holiday for the Lord's Day.—Except in cases of emergency, it shall not be lawful for any person to require any employee engaged in any work of receiving, transmitting or delivering telegraph or telephone messages or in the work of any industrial process or in connection with transportation, to do on the Lord's Day the usual work of his ordinary calling, unless such employee is allowed during the next six days of such week, twenty-four consecutive hours without labour.

2. RESTRICTION.—This section shall not apply to any employee engaged in the work of any industrial process in which the regular day's labour of such employee is not of more than eight hours' duration. 6 E. VII, c. 27, s. 4.

7. Games and Performances where Admission Fee is Charged.—It shall not be lawful for any person, on the Lord's Day, except as provided in any Provincial Act or law now or hereafter in force, to engage in any public game or contest for gain, or for any prize or reward, or to be present thereat, or to provide, engage in, or be present at any performance or public meeting, elsewhere than in a church, at which any fee is charged, directly or indirectly, either for admission to such performance or meeting, or to any place within which the same is provided, or for any service or privilege thereat.

2. CHARGES FOR CONVEYANCE TO PERFORMANCE.—When any performance at which an admission fee or any other fee is so charged is provided in any building or place to which persons are conveyed for hire by the proprietors or managers of such performance or by any one acting as their agent or under their control, the charge for such conveyance shall be deemed an indirect payment of such fee within the meaning of this section. 6 E. VII, c. 27, s. 5.

8. Excursions by Conveyances where Fee is Charged.—It shall not be lawful for any person on the Lord's Day, except as provided by any Provincial Act or law now or hereafter in force, to run, conduct, or convey by any mode of conveyance any excursion on which passengers are conveyed for hire, and having for its principal or only object the carriage on that day of such passengers for amusement or pleasure, and passengers so conveyed shall not be deemed to be travellers within the meaning of this Act. 6 E. VII, c. 27, s. 6.

9. Advertisements of Prohibited Performances, etc., wherever Taking Place.—It shall not be lawful for any person to advertise in any manner whatsoever any performance or other thing prohibited by this Act.

2. It shall not be lawful for any person to advertise in Canada in any manner whatsoever any performance or other thing which

if given or done in Canada would be a violation of this Act. 6 E. VII, c. 27, s. 7.

10. Shooting.—It shall not be lawful for any person on the Lord's Day to shoot with or use any gun, rifle or other similar engine, either for gain or in such a manner or in such places as to disturb other persons in attendance at public worship or in the observance of that day. 6 E. VII, c. 27, s. 8.

11. Sale of Foreign Newspapers on Sunday.—It shall not be lawful for any person to bring into Canada for sale or distribution, or to sell or distribute within Canada, on the Lord's Day, any foreign newspaper or publication classified as a newspaper. 6 E. VII, c. 27, s. 9.

WORKS OF NECESSITY AND MERCY EXCEPTED.

12. Works of Necessity and Mercy not Prohibited.—Notwithstanding anything herein contained, any person may on the Lord's Day do any work of necessity or mercy, and for greater certainty, but not so as to restrict the ordinary meaning of the expression "work of necessity or mercy," it is hereby declared that it shall be deemed to include the following classes of work:—

(a.) Any necessary or customary work in connection with divine worship;

(b.) Work for the relief of sickness and suffering, including the sale of drugs, medicine and surgical appliances by retail;

(c.) Receiving, transmitting, or delivering telegraph or telephone messages;

(d.) Starting or maintaining fires, making repairs to furnaces and repairs in cases of emergency, and doing any other work, when such fires, repairs or work are essential to any industry or industrial process of such a continuous nature that it cannot be stopped without serious injury to such industry or its product or to the plant or property used in such process;

(e.) Starting or maintaining fires, and ventilating, pumping out, and inspecting mines, when any such work is essential to the protection of property, life or health;

(f.) Any work without the doing of which on the Lord's Day, electric current, light, heat, cold air, water or gas cannot be continuously supplied for lawful purposes;

(g.) The conveying of travellers and work incidental thereto;

(h.) The continuance to their destination of trains and vessels in transit when the Lord's Day begins, and work incidental thereto;

(i.) Loading and unloading merchandise, at intermediate points, on or from passenger boats or passenger trains;

(j.) Keeping railway tracks clear of snow or ice, making repairs in cases of emergency, or doing any other work of a like incidental character necessary to keep the lines and tracks open on the Lord's Day;

(k.) Work before six o'clock in the forenoon and after eight o'clock in the afternoon of yard crews in handling cars in railway yards;

(l.) Loading, unloading, and operating any ocean-going vessel which would otherwise be unduly delayed after her scheduled

time of sailing, or any vessel which otherwise would be in imminent danger of being stopped by the closing of navigation; or loading or unloading before seven o'clock in the morning or after eight o'clock in the afternoon any grain, coal or ore carrying vessel after the fifteenth of September;

(m.) The caring for milk, cheese, and live animals, and the unloading of and caring for perishable products and live animals, arriving at any point during the Lord's Day;

(n.) The operation of any toll or drawbridge, or any ferry or boat, authorized by competent authority to carry passengers on the Lord's Day;

(o.) The hiring of horses and carriages or small boats for the personal use of the hirer or his family for any purpose not prohibited by this Act;

(p.) Any unavoidable work after six o'clock in the afternoon of the Lord's Day, in the preparation of the regular Monday morning edition of a daily newspaper;

(q.) The conveying of His Majesty's mails and work incidental thereto;

(r.) The delivery of milk for domestic use, and the work of domestic servants and of watchmen;

(s.) The operation by any Canadian electric street railway company, whose line is interprovincial or international, of its cars, for passenger traffic, on the Lord's Day, on any line or branch which is on the day of the coming into force of this Act, regularly so operated;

(t.) Work done by any person in the public service of His Majesty while acting therein under any regulation or direction of any Department of the Government;

(u.) Any unavoidable work by fishermen after six o'clock in the afternoon of the Lord's Day in the taking of fish;

(v.) All operations connected with the making of maple sugar and maple syrup in the maple grove;

(w.) Any unavoidable work on the Lord's Day to save property in cases of emergency or where such property is in imminent danger of destruction or serious injury;

(x.) Any work which the Board of Railway Commissioners for Canada, having regard to the object of this Act, and with the object of preventing undue delay, deems necessary to permit in connection with the freight traffic of any railway. 6 E. VII, c. 27, s. 3.

OFFENCES AND PENALTIES.

13. Penalty for Infraction of Act.—Every person who violates any of the provisions of this Act shall for each offence be liable, on summary conviction, to a fine, not less than one dollar and not exceeding forty dollars, together with the cost of prosecution. 6 E. VII, c. 27, s. 10.

14. Employer's Authorizing.—Every employer who authorizes or directs anything to be done in violation of any provision of this Act, shall for each offence be liable, on summary conviction, to a fine not exceeding one hundred dollars and not less than twenty dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII, c. 27, s. 11.

15. Corporation Directing or Permitting Violation of this Act.—Every corporation which authorizes, directs or permits its employees to carry on any part of the business of such corporation in violation of any of the provisions of this Act, shall be liable, on summary conviction before two justices of the peace, for the first offence to a penalty not exceeding two hundred and fifty dollars and not less than fifty dollars, and for each subsequent offence to a penalty not exceeding five hundred dollars and not less than one hundred dollars, in addition to any other penalty prescribed by law for the same offence. 6 E. VII, c. 27, s. 12.

PROCEDURE.

16. Provincial Lord's Day Act not Affected.—Nothing herein shall be construed to repeal or in any way affect any provisions of any Act or law relating in any way to the observance of the Lord's Day in force in any province of Canada when this Act comes into force; and where any person violates any of the provisions of this Act, and such offence is also a violation of any other Act or law, the offender may be proceeded against either under the provisions of this Act or under the provisions of any other Act or law applicable to the offence charged. 6 E. VII, c. 27, s. 14.

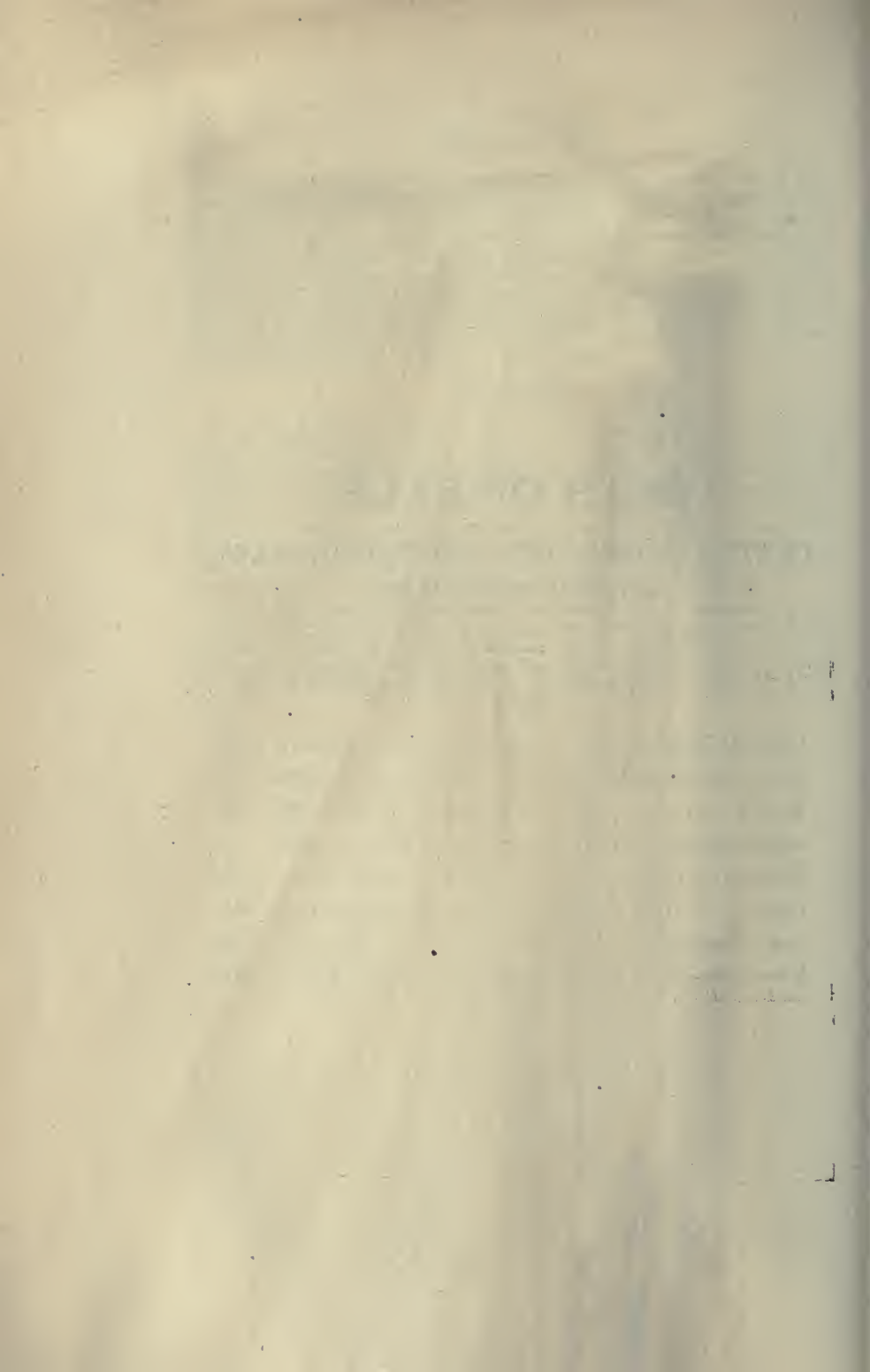
17. Limitation of Actions.—No action or prosecution for a violation of this Act shall be commenced without the leave of the Attorney General for the province in which the offence is alleged to have been committed, nor after the expiration of sixty days from the time of the commission of the alleged offence. 6 E. VII, c. 27, s. 15.

BILLS OF SALE

CHATTEL MORTGAGES, CONDITIONAL SALES AND HIRE RECEIPTS

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BRITISH COLUMBIA

5 EDWARD VII., CHAP. 8.

AN ACT TO CONSOLIDATE AND AMEND THE LAW FOR PREVENTING FRAUDS UPON CREDITORS BY SECRET BILLS OF SALE OF PERSONAL CHATTELS.

[8th April, 1905.]

Whereas it is expedient to consolidate and amend the law relating to Bills of Sale of Personal Chattels:

Therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited for all purposes as the "Bills of Sale Act."

APPLICATION OF ACT.

2. Application of Act.—This Act shall apply to every bill of sale executed after the passing of this Act (whether the same be absolute, or subject or not subject to any trust) whereby the holder or grantee has power, either with or without notice, and either immediately or at any future time, to seize or take possession of any personal chattels comprised in or made subject to such bill of sale.

INTERPRETATION.

3. Interpretation.—In this Act the following words and expressions shall have the meanings in this section assigned to them respectively, unless there be something in the subject or context repugnant to such construction, that is to say:—

Bill of sale.—The expression "bill of sale" shall include bills of sale, assignments, transfers, declarations of trust without transfers, inventories of goods with receipt thereto attached, or receipts for purchase moneys of goods, and other assurances of personal chattels, and also powers of attorney, authorities or licences to take possession of personal chattels as security for any debt, and also any agreement, whether intended or not to be followed by the execution of any other instrument, by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred, but shall not include the following documents, that is to say: Assignments for the benefit of the creditors of the person making or giving the same; marriage settlements; transfers or assignments of any ship or vessel or any share thereof; transfers of goods in the ordinary course of business of any trade or calling; bills of sale of goods in foreign parts or at sea; bills of lading; mortgages or charges created by a company, and required to be registered with the Registrar of Joint Stock Companies under the "Companies Mortgage Registration Act, 1905;" any securities that may be taken under section 74 of an Act of the Parliament of Canada passed in the fifty-third year of the reign of Her late Majesty Queen Victoria, chapter 31, and known as the Bank Act; warehouse-keepers' certificates; warrants or orders for the delivery of goods;

or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of such document to transfer or receive goods thereby represented:

"Personal chattels."—The expression "personal chattels" shall mean goods, furniture and other articles capable of complete transfer and delivery, and (when separately assigned or charged) fixtures and growing crops, but shall not include chattel interests in real estate nor fixtures (except trade machinery as hereinafter defined) when assigned together with a freehold or leasehold interest in any land or building to which they are affixed; nor growing crops, when assigned together with any interest in the land on which they grow; nor shares or interest in the stock, funds or securities of any government, or in the capital or property of incorporated or joint stock companies; nor choses in actions; nor any stock or produce upon any farm or lands which, by virtue of any covenant or agreement or of the custom of the country, ought not to be removed from any farm where the same are at the time of making or giving of such bill of sale:

"Apparent possession" of personal chattels.—Personal chattels shall be deemed to be in the "apparent possession" of the person making or giving a bill of sale, so long as they remain or are in or upon any house, mill, warehouse, building, works, yard, land or other premises occupied by him or are used and enjoyed by him in any place whatsoever, notwithstanding that formal possession thereof may have been taken by or given to any other person:

"Prescribed."—"Prescribed" means prescribed by rules made under the provisions of this Act:

"Grantee."—"Grantee" shall include assignee.

4. Trade machinery deemed personal chattels.—From and after the coming into force of this Act trade machinery shall, for the purposes of this Act, be deemed to be personal chattels, and any mode of disposition of trade machinery by the owner thereof which would be a bill of sale as to any other personal chattels shall be deemed to be a bill of sale within the meaning of this Act.

For the purposes of this Act—

"Trade machinery" means the machinery used in or attached to any factory or workshop:

(1) Exclusive of the fixed motive powers, such as the water-wheels and steam engines and the steam-boilers, donkey engines and other fixed appurtenances of the said engines and motive powers; and

(2) Exclusive of the fixed power machinery, such as the shafts, wheels, drums, and their fixed appurtenances, which transmit the action of the motive powers to the other machinery, fixed and loose; and

(3) Exclusive of the pipes for steam, gas and water in the factory or workshop.

The machinery or effects excluded by this section from the definition of trade machinery shall not be deemed to be personal chattels within the meaning of this Act.

"Factory or workshop" mean any premises on which any manual labour is exercised by way of trade, or for purposes of gain,

in or incidental to the following purposes or any of them, that is to say—

(a) In or incidental to the making any article or part of an article; or

(b) In or incidental to the altering, repairing, ornamenting, finishing of any article; or

(c) In or incidental to the adapting for sale any article.

5. Attornments, etc., giving power of distress on personal chattels, deemed bills of sale.—Every attornment, instrument or agreement, not being a mining lease, whereby a power of distress is given or agreed to be given by any person to any other person by way of security for any present, future or contingent debt or advance, and whereby any rent is reserved or made payable as a mode of providing for the payment of interest on such debt or advance, or otherwise for the purpose of such security only, shall be deemed to be a bill of sale within the meaning of this Act, of any personal chattels which may be seized or taken under such power of distress: Provided that nothing in this section shall extend to any mortgage of any estate or interest in any land, tenement or hereditaments which the mortgagee being in possession shall have demised to the mortgagor as his tenant at a fair and reasonable rent.

6. When fixtures or growing crops are not separately assigned or charged.—No fixtures or growing crops shall be deemed under this Act to be separately assigned or charged by reason only that they are assigned by separate words, or that power is given to sever them from the land or building to which they are affixed, or from the land on which they grow, without otherwise taking possession of or dealing with such land or building, or land if by the same instrument any freehold or leasehold interest in the land or building to which such fixtures are affixed, or in the land on which the crops grow, is also conveyed or assigned to the same persons or person.

As to fixtures or growing crops assigned before commencement of this Act.—The same rule of construction shall be applied to all deeds or instruments, including fixtures or growing crops, executed before the commencement of this Act and then subsisting and in force, in all questions arising under any liquidation, assignment for the benefit of creditors or execution of any process of any Court, which shall take place or be issued after the commencement of this Act.

ATTESTATION AND REGISTRATION.

7. Attestation and registration.—(1) Every bill of sale to which this Act applies shall be duly attested and registered under this Act in the manner and within the time hereinafter prescribed, and shall set forth the true consideration for which the bill of sale was given, otherwise such bill of sale as against all assignees, receivers or trustees of the estate and effects of the person whose chattels, or any of them, are comprised in such bill of sale, or under any assignment for the benefit of the creditors of such person, and as against all sheriffs and sheriffs' officers and other persons seizing any chattels comprised in such bill of sale in the execution of any process of execution lawfully sued out of any Court of competent jurisdiction in that behalf authorising the seizure of the chattels of

the person by whom or of whose chattels such bill of sale shall have been made or given, and as against every person by whom or on whose behalf such process shall have been issued, and as against subsequent bona fide purchasers or mortgages for valuable consideration, shall be null and void to all intents and purposes whatsoever, so far as regards the property in or right to the possession of any chattels comprised in such bill of sale, which at or after the time of the execution by the debtor of such assignment for the benefit of his creditors or of the execution of such process of execution as aforesaid, or of such purchase or mortgage as the case may be, and after the expiration of the time hereinafter prescribed, shall be in the possession, or apparent possession, of the person making and giving such bill of sale, or of any person against whom the process shall have issued under or in the execution of which such bill of sale shall have been made or given, as the case may be.

(2.) **Time for registration.**—Every bill of sale, or a true copy thereof, shall, within the period of five days in cases where the goods referred to therein are within the corporate limits of a city or town in which is situate an office of the County Court prescribed for the registration of bills of sale, and in all other cases within a period of twenty-one days after the making thereof next ensuing, be registered by the filing of such bill of sale or copy thereof, as the case may be, together with such affidavits as are herein required, in the County Court Registry of such county or place within which the chattels referred to and dealt with in and by such bill of sale are situate, as hereinafter mentioned:—

For the County of Victoria—In the office of the Registrar of the County Court at Victoria:

For the County of Nanaimo—In the office of the Registrar of the County Court at Nanaimo:

For the County of Vancouver—In the office of the Registrar of the County Court at Vancouver:

For that portion of the County of Vancouver, being the territory covered by the County of Atlin, as defined by the "Counties Definition Act Amendment Act, 1904"—In the office of the Registrar of the County Court at Atlin:

For the County of Westminster—In the office of the Registrar of the County Court at New Westminster:

For the County of Cariboo—In the office of the Registrar of the County Court at Ashcroft:

For the Grand Forks Mining Division—The office of the Registrar of the County Court at Grand Forks:

For the Greenwood Mining Division.—The office of the Registrar of the County Court at Greenwood:

For the Vernon Mining Division—The office of the Registrar of the County Court at Vernon;

For the Osoyoos Mining Division—The office of the Registrar of the County Court at Fairview:

For the remainder of the County of Yale—In the office of the Registrar of the County Court at Kamloops:

For those portions of Kootenay County being the territory covered by the Slocan and Kaslo Electoral Districts—In the office of the Registrar of the County Court at Kaslo:

For those portions of Kootenay County being the territory covered by the Nelson and Ymir Electoral Districts—In the office of the Registrar of the County Court at Nelson:

For that portion of Kootenay County being the territory covered by the Rossland City Electoral District—In the office of the Registrar of the County Court at Rossland:

For that part of the County of Kootenay being the territory covered by the Columbia Electoral District—In the office of the Registrar of the County Court at Golden:

For that part of the County of Kootenay being the territory covered by the Cranbrook Electoral District—In the office of the Registrar of the County Court at Cranbrook:

For that part of the County of Kootenay being the territory covered by the Fernie Electoral District—In the office of the Registrar of the County Court at Fernie:

For the remainder of the County of Kootenay—In the office of the Registrar of the County Court at Revelstoke:

Alteration of registration districts.—Provided, however, that the Lieutenant-Governor in Council may, from time to time, subdivide or alter said districts, and provide for the registration of bills of sale in the office of any Registrar of a County Court for a district or at a place different from those above mentioned.

(3.) Changes in Counties, Electoral Districts or Mining Divisions not to affect Registration Districts.—Save as hereinafter prescribed, the Registration Districts established, or hereafter to be established, shall not be altered by any change that may hereafter be made in the Counties, Electoral Districts or Mining Divisions therein mentioned.

(4.) Where personal chattels situated in different Registry Districts, bill of sale to be registered in one and duplicates to be forwarded to the other or others.—If the chattels comprised in and dealt with, or purporting to be dealt with or affected by, any bill of sale shall be situate partly within the limits of one County Court Registry and partly in one or more other County Court Registries, it shall only be necessary to register such bill of sale in one such Registry, but the person effecting such registration shall, at the time thereof, furnish such number of full and complete copies of the bill of sale and affidavits as may be necessary to the Registrar in whose office registration shall be effected, and such Registrar shall forward one such copy to each Registry in which such bill of sale would, but for this provision, require to be registered under the provisions of this Act, and such copy shall be verified by such Registrar in Form C contained in the Schedule to this Act, and the sum of one dollar shall be paid to the Registrar for each certificate of verification.

(5) Affidavit to be made by an attesting witness.—To every bill of sale or copy thereof, as the case may be, except any bill of sale made or given by a company or corporation aggregate which has a registered head office or chief place of business in this Province, shall be annexed an affidavit made by the attesting witness, or one of the attesting witnesses, to the execution of such bill of sale, identifying such bill of sale or copy, as the case may be, and setting forth the time of such bill of sale being made or given, and a description of the residence or place of business and occupation of the person making and giving the same, a description of the residence or place of business and address of every attesting witness, and, in case such bill of sale shall be made or given by any person under or in execution of any

process of execution, a description of the residence and occupation of the person against whom such process shall have issued. Every such affidavit may be in the Form A contained in the Schedule to this Act, with such variations as circumstances may require. To every bill of sale or copy thereof, as the case may be made or given by a company or corporation aggregate, which has a registered head office or chief place of business in this province shall be annexed an affidavit made by the President, Secretary, or a Director of said company or corporation, in Form B to the schedule to this act (as amended by 8 Edw. VII, c. 6, s. 2).

(6.) Judge of Supreme Court may, in certain cases, permit proof of bill of sale otherwise than by affidavit of an attesting witness.—In case the attesting witness or witnesses to any bill of sale shall, before the making of the affidavit by sub-section (5) of this section required to be made, or the person or persons who has or have executed a bill of sale on behalf of any company or corporation aggregate, shall, before the making of the affidavit by sub-section (7) of this section required to be made, die or leave this Province, or become incapable of making or refuse to make such affidavit, it shall be lawful for any Judge of the Supreme or County Court to make an order permitting the filing of such bill of sale or a copy thereof, upon such proof of the due execution and attestation thereof as the Judge by such order may require and allow. An office copy of such order shall be annexed to the bill of sale or copy, as the case may be, and filed therewith; and the registration of the bill of sale or copy, under and in compliance with the terms of such order, shall have the like effect as the registration thereof with the affidavit required by sub-sections (5) and (7) of this section, or as the case may be (as amended by 8 Edw. VII, c. 6, s. 3.)

(7.) Affidavits where such bill of sale made to a Company.—If any bill of sale as aforesaid be made to an incorporated company, the several affidavits and statements herein mentioned may be made by the president, vice-president, manager or assistant manager of such grantee company, or any other officer of the company authorised for such purpose (as amended 8 Edw. VII, c. 6, s. 4.)

(8.) Affidavit by grantee as to bona fides.—Bill of sale void if affidavit not filed contemporaneously.—Every bill of sale shall further be accompanied by an affidavit by the grantee, or one of several grantees, his or their agent, that the assignment is bona fide for valuable consideration, and that the consideration is duly set forth in the bill of sale, and that it is not for the purpose of enabling the grantee to hold the goods mentioned therein as against the creditors of the grantor; or in the case of security for a debt, that the grantor is justly and truly indebted to the grantee in the sum therein mentioned, that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due; and in all cases that the bill of sale is not given for the purpose of protecting the goods and chattels mentioned therein against the creditors of the grantor, or of preventing the creditors of said grantor from obtaining payment of any claim against him; and said affidavit shall be filed along with said bill of sale, otherwise the registration of the bill of sale shall be void. This sub-sections shall not apply to the bills of sale mentioned in section 5 (as amended by 8 Edw. VII, c. 6, s. 5.)

(9.) Subsequent bill of sale given in substitution for prior unregistered bill of sale declared void in certain cases.—

Where a subsequent bill of sale is executed after the execution of a prior unregistered bill of sale, and comprises all or any part of the personal chattels comprised in such prior bill of sale, then, if such subsequent bill of sale is given as a security for the same debt as is secured by the prior bill of sale, or for any part of such debt, it shall, to the extent to which it is a security for the same debt or part thereof, and so far as respects the personal chattels, or part thereof, comprised in the prior bill, be absolutely void, unless it is proved to the satisfaction of the Court having cognizance of the case that the subsequent bill of sale was *bonâ fide* given for the purpose of correcting some material error in the prior bill of sale and not for the purpose of evading this Act.

(10.) Registered bill of sale to have priority over unregistered bill of sale.—Every bill of sale which hereafter shall be registered in accordance with the provisions hereof, shall, subject to the provisions hereof, have and take precedence and priority over any unregistered bill of sale of the same chattels.

(11.) Transfer or assignment of registered bill of sale need not be registered.—A transfer or assignment of a registered bill of sale need not be registered.

8. Bill of sale given subject to any defeasance, etc., not shown in body of bill of sale shall be void.—If the bill of sale is made or given subject to any defeasance or condition, or declaration of trust not contained in the body thereof, such defeasance, condition or declaration shall be deemed to be part of the bill and shall be written on the same paper or parchment therewith before the registration, and shall be truly set forth in the original or copy filed under this Act therewith, and as part thereof, otherwise the registration shall be void.

9. Priority where two or more bills of sale cover same chattels.—In case two or more bills of sale are given, comprising in whole or in part any of the same chattels, they shall have priority in the order of the date of their registration respectively as regards such chattels.

PROTECTION OF CREDITORS.

10. Creditor of grantor may demand statement of accounts as between grantor and grantee.—Every creditor of the grantor of a bill of sale may, from time to time, in writing, require the grantee of such bill of sale to furnish a full statement of the accounts as between the grantor and grantee of such bill of sale.

(1.) What such demand shall contain and shew.—Must be verified by declaration.—Such demand for an account shall be accompanied by a statement showing in full the accounts as between the grantor of the bill of sale and the applicant, and that be relationship of debtor and creditor exists between them, which statement shall be verified by a declaration pursuant to the Canada Evidence Act.

(2.) Statement asked for to be furnished within fifteen days.—Within fifteen days after such demand as aforesaid, the grantee of the bill of sale shall furnish the applicant with a full and complete statement of the accounts as between himself and the

grantor in relation to the bill of sale, verified pursuant to the Canada Evidence Act, otherwise the registration of the bill of sale shall be void. The person furnishing such statement shall be entitled to receive from the person demanding same thirty cents per folio for such account and declaration, upon delivery of same.

(3.) **When grantee may be relieved from furnishing such statement.**—The grantee of any bill of sale may be relieved from compliance with this section by order of a Judge of the Supreme or County Court, upon petition, upon said Judge being satisfied that the application is frivolous or not made in good faith, or for any other reason that to the Judge may seem just; and the Judge may award and order the costs occasioned by such demand and the petition to be paid by either party to the other after taxation thereof.

11. Power of Judge to rectify omission to register bill of sale or file affidavit.—Within one month from the date of execution of any bill of sale any Judge of the Supreme Court, on being satisfied by affidavit that the omission to register a bill of sale within the time prescribed by this Act, or to file to the affidavit of bonâ fides, as required by section 7, sub-section (8), or the omission or mis-statement of the name, residence or occupation of any person, was accidental or due to inadvertence, may, in his discretion, order such omission or mis-statement to be rectified by the insertion in the register of the true name, residence or occupation, or by extending the time for such registration, on such terms and conditions (if any) as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct. An office copy of any order made as aforesaid shall be annexed to the bill of sale or any copy thereof, as the case may be, and registered therewith.

SATISFACTION.

12. How satisfaction may be entered.—The Registrar is hereby empowered to enter satisfaction upon any bill of sale, or copy thereof, upon being satisfied that the debt (if any) or cause for which such bill of sale is given as security has been discharged, and upon payment of a fee of one dollar; but in all cases where the consent of the mortgagee, grantee, or assignee, or person interested as such, as the case may be, has not been obtained, satisfaction shall not be entered without an order from a Judge of the Supreme or County Court obtained for that purpose.

13. When bill of sale satisfied, Registrar, without extra charge, to notify Registrars of other districts when bill of sale covers goods, etc., in such other districts.—Whenever any Registrar shall enter satisfaction upon any bill of sale, and the goods or chattels comprised therein have been situate partly in one or more districts or registries, he shall without extra charge, forward a notice in the Form E to the Schedule hereto to each of the registries in which the bill of sale has been filed, and each Registrar shall, on receipt of such notice, write the word "satisfied" on the duplicate of such bill of sale deposited in his office.

AFFIDAVITS.

14. Before whom affidavits may be made.—Affidavits sworn out of the Province.—All affidavits required by this Act to be taken and made, may be taken by and made before the Regis-

trar appointed under the provisions of this Act, or by and before any Judge, Registrar, Deputy Registrar, or Clerk of a Court having a seal, or by and before any Notary Public practising within the Province, Justice of the Peace, or Commissioner empowered to take affidavits, and if such affidavits are made without the Province, then such affidavits may be taken by and made before any person authorised by the Oaths Act for the making of affidavits without the Province for the purpose of any proceedings in any Court in the Province.

RULES AND REGULATIONS.

15. Rules and regulations.—The following rules and regulations shall be observed: Provided, however, that the Lieutenant-Governor in Council may from time to time repeal, alter and vary the said rules, and make, repeal, alter and vary rules for giving effect to the provisions of this Act:—

(1.) **Books to be kept containing particulars of bills of sale.**—Every Registrar shall cause every bill of sale and every such copy, and every affidavit filed in his office, to be numbered; and shall keep a book or books, in which he shall cause to be entered a numerical list of every such bill of sale, and copy, and affidavits, containing therein the name, addition and description of the person making or giving the same; or, in case the same shall be made or given by any person under or in the execution of process as aforesaid, then the name, addition and description of the person against whom such process shall have issued, and also of the person to whom or in whose favour the same shall have been given, together with the number affixed to the said bill of sale, or copy, or affidavits; and the date of the said bill of sale, or copy, and of the registration thereof, and all such particulars, shall be entered according to the Form D given in the Schedule to this Act; and the said book, and every bill of sale, or copy, and affidavit filed as aforesaid, may be searched and viewed by all persons, at all reasonable times, upon payment for every search of the fee of twenty-five cents:

(2.) **Index book to be kept.**—Every Registrar shall keep an index book showing in alphabetical order the names of all persons making or giving bills of sale, and of all persons against whom process shall have issued as aforesaid, together with a cross reference to the volume and folio of the book directed to be kept as in the last preceding section, and every Registrar shall also keep an index book, in manner aforesaid, of all duplicates of bills of sale, or copies thereof, and affidavits as aforesaid, transmitted to him as hereinbefore provided:

(3.) **Fees to be taken.**—Every Registrar shall be entitled to receive for filing and registering every bill of sale, or a copy thereof, as aforesaid (including the taking of any affidavit) the sum of two dollars, and no more; and any person shall be entitled to have an office copy or an extract of every bill of sale, or of the copy thereof, upon paying for the same at the rate of twenty-five cents per folio of one hundred words:

(4.) **Fees not provided for.**—In respect of any matter not hereinbefore provided for, the Registrar shall exact such fees as are prescribed by rule or in the Schedule hereto:

(5.) **Fees to be subject to order of Lieutenant-Governor in Council.**—All moneys received by any Registrar under this Act shall be dealt with and accounted for in such manner as the Lieutenant-Governor in Council may by Order in Council from time to time direct and appoint.

SAVING CLAUSES.

16. When time for registering expires on a Sunday.—When the time for registering a bill of sale expires on a Sunday or other day on which the Registrar's office is closed, the registration shall be valid if made on the next following day on which the office is open.

17. Pending litigation, etc., not affected.—Nothing herein contained shall affect any rights accrued, obligations incurred, or litigation pending at the time of this Act coming into force.

18. Acts repealed.—The following Acts are hereby repealed:—
The "Bills of Sale Act," being chapter 32 of the Revised Statutes, 1897.

The "Bills of Sale Act Amendment Act, 1899," being chapter 7 of the Statutes of 1899.

The "Bills of Sale Act Amendment Act, 1901," being chapter 5 of the Statutes of 1901.

The "Bills of Sale Act Amendment Act, 1902," being chapter 5 of the Statutes of 1902.

The "Bills of Sale Act Amendment Act, 1904," being chapter 8 of the Statutes of 1903-4.

Provided that (except as is herein expressly mentioned with respect to construction) nothing in this Act shall affect any bill of sale executed before the commencement of this Act; and as regards bills of sale so executed, the Acts hereby repealed shall continue in force.

SCHEDULE.

"BILLS OF SALE ACT."

FORM A.

I, _____, of _____, make oath and say as follows:—

1. That the paper writing hereunto annexed, and marked "A," is a true copy of a bill of sale, and of every (or where the original is filed, "is the bill of sale and every") schedule or inventory thereunto annexed, or therein referred to, and of every attestation of the execution thereof, as made and given, and executed by

2. That the bill of sale was made and given by the said _____ on the _____ day of _____, in the year of Our Lord one thousand nine hundred and _____

3. That I was present and did see the said _____ in the said bill of sale mentioned, and whose name is signed thereto, sign and execute the same on the said _____ day of _____, in the year aforesaid.

4. That the said _____ at the time of making and giving the said bill of sale resided and still resides (if such be the fact), at _____ and then was and still is (if such be the fact) _____ [If there has been a change of residence or occupation since execution of bill of sale give particulars, or, if place of business be given, alter accordingly.]

5. That the name _____ set and subscribed as the witness attesting the due execution thereof, is of the proper handwriting of me, this deponent, and that I reside at [give number of house, street and town], and am

Subscribed to and sworn before me this _____ day of _____
A. D. 19 _____

“BILLS OF SALE ACT.”

FORM B.

For a Company or Corporation.

I, _____, of _____, President, Secretary or Director (or as the case may be) of the [name of company or corporation], make oath and say as follows:—

1. That the paper writing hereunto annexed and marked “A,” is a true copy of a bill of sale, and of (or when an original bill of sale is filed “is a bill of sale together with”) every schedule or inventory thereto annexed or therein referred to as made, given and executed by the said [name of company or corporation]

2. That I, as President, Secretary, Director (or as the case may be) of the said (company or corporation), being duly authorized so to do, did affix the seal of the said (company or corporation) to the said bill of sale, did sign the said bill of sale as (President, Secretary, Director, or as the case may be) of the said (company or corporation) and did duly deliver the said bill of sale as the act and deed of the said (company or corporation) on the day of _____, A.D. 19 _____.

3. That the head office or chief place of business of the said (company or corporation) in British Columbia is situate at [here state fully the whereabouts of the head office or chief place of business such as street and number if any], in the said Province.

Subscribed to and sworn before me, this _____ day of _____, A.D. 19 _____.

“BILLS OF SALE ACT.”

FORM C.

I hereby certify that the document hereunto annexed is a duplicate of the bill of sale (or of the bill of sale, as the case may be) and of the affidavit, as filed in this office on the _____ day of _____, 19 _____.

A. B.

To the County Court Registrar at

B. C. SALES OF GOODS ACT.

FORM D.

No.	By whom given.			To whom given.	Nature of Instrument.	Date of Instrument.	Date of Registration.	Amount of purchase or mortgage money.	Short particulars of property sold or mortgaged.	Date of satisfaction entered.
	Name.	Address.	Occupation.							

"BILLS OF SALE ACT."

FORM E.

To the County Court Registrar at

Take notice that a bill of sale, bearing date the day of , A.D. 19 , made between of and of , in consideration of the sum of \$ has been satisfied, and satisfaction thereof was duly entered by me, on the day of , A.D. 19 ,
A.B.

R. S. B. C., 1897, CHAP. 169.

THE SALES OF GOODS ACT.

CONDITIONAL SALES.

24. Reservation of right of disposal.—Where there is a contract for the sale of specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to the buyer, or to a carrier or other bailee or custodian for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled:

(2) Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the seller or his agent, the seller is *prima facie* deemed to reserve the right of disposal:

(3) Where the seller of goods draws on the buyer for the price,

and transmits the bill of exchange and bill of lading to the buyer together, to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honour the bill of exchange, and if he wrongfully retains the bill of lading the property in the goods does not pass to him. 56 and 57 Vict. (Imp.), c. 71, s. 19.

25. Formalities requisite to valid conditional sales.—From and after the coming into force of this Act, very receipt-note, hire receipt, or order for chattels given by any bailee of chattels where the condition of the bailment is such that the possession of the chattel should pass without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money, or some stipulated part thereof, shall be void as against any subsequent purchasers or mortgagees of such chattels without notice in good faith for valuable consideration, unless a true copy of any such receipt-note, hire receipt, order, or other instrument evidencing the bailment or conditional sale given to secure the purchase money, or part thereof, shall be filed with the proper officer, not later than twenty-one days after the delivery of the goods or the first portion thereof to the bailee or conditional purchaser; and no such bailment or conditional purchase shall be valid as against such subsequent purchaser or mortgagee as aforesaid, unless it is evidenced in writing, signed by the bailee, or conditional purchaser, or his agent. The proper officer with whom any instrument as aforesaid shall be filed shall be the officer with whom a bill of sale affecting property situate at the place where the bailee or conditional purchaser resides at the time of the bailment or conditional purchase would by law be required to be registered. 1896, c. 9, s. 1.

(2) Should any goods or chattels subject to the provisions of this Act be affixed to any realty, such goods and chattels shall notwithstanding remain so subject and shall not be realty, but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against the manufacturer, bailor or vendor thereof, or any person claiming through or under them to retain the said goods and chattles, upon payment of the amount due and owing thereon (added by 3 and 4 Edw. VII, c. 46, s. 1.)

26. Statement of amount due to be given on request.—Every manufacturer, bailor, or vendor shall, on application by any proposed purchaser or other interested person, within five days furnish full information respecting the amount or balance due or unpaid on any such manufactured goods or chattels, and the terms of payment of such amount or balance, and in case of refusal or neglect to furnish the information asked for, such manufacturer, bailor, or vendor shall be liable to a fine not exceeding fifty dollars on summary conviction before a Stipendiary or Police Magistrate or two Justices of the Peace. 1892, c. 21, s. 2.

27. Address to be given by person demanding statement.—The person so inquiring (if by letter) shall give a name and post office address to which a reply may be sent, and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post office within the said five days, addressed to the person inquiring at his proper post office address, or where a name and address is given as aforesaid, addressed to such person by the name and at the post office so given. 1892, c. 21, s. 3.

28. Power to redeem chattel.—If any manufacturer, bailor, or vendor, of such cattel or chattels, or his successor in interest where there has been a conditional sale, or promise of sale, take possession thereof for breach of condition, he shall retain the same for twenty days, and the bailee, or his successor in interest, may redeem the same within such period on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. 1892, c. 21, s. 4.

29. Notice of sale.—When the goods or chattels have been sold or bailed originally for a greater sum than thirty dollars, the same, when taken possession of, as in the preceding section mentioned, shall not be sold without five days' notice of the intended sale being first given to the bailee, or his successor in interest. The notice may be personally served or may, in the absence of such bailee or his successor in interest, be left at his residence or last known place of abode in British Columbia, or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee, or his successor in interest, at his last known post office address in Canada. The said five days or seven days may be part of the twenty days in the previous section mentioned. 1892, c. 21, s. 5.

30. Officer to file copy of receipt.—The proper officer, on receipt of the copy mentioned in section 25 of this Act, shall duly file the same and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge twenty-five cents for every such filing, and ten cents for every search in respect thereof. In the event of any variance between the original document and the copy which has been filed, the copy filed shall prevail. 1892, c. 21, s. 6.

31. Copy of receipt to be left with vendee.—The manufacturer, bailor, or vendor shall leave a copy of the receipt-note, hire receipt, order, or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale with the bailee or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter. 1892, c. 21, s. 7.

32. Risk "prima facie" passes with property.—Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk, whether delivery has been made or not: Provided that where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault: Provided also, that nothing in this section shall affect the duties or liabilities of either seller or buyer as a bailee or custodian of the goods of the other party. 56 and 57 Vict. (Imp.), c. 71, s. 20.

NORTH WEST TERRITORIES, ALBERTA and SASKATCHEWAN

N. W. T. BILLS OF SALE ORDINANCE.

(C. O. 1898, c. 43.)

AN ORDINANCE RESPECTING MORTGAGES AND SALES OF PERSONAL PROPERTY.

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories enacts as follows:

SHORT TITLE.

1. **Short title.**—This Ordinance may be cited and known as "*The Bills of Sale Ordinance.*" C. O., 43, s. 1.

REGISTRATION DISTRICTS.

2. **Registration districts.**—For the purposes of the registration of mortgages and other transfers of personal property in the Territories the following shall be registration districts:

1. **Moosomin district.**—The registration district of "Moosomin," comprising that part of the provisional district of Assiniboia as is defined by the Order of the Privy Council of Canada passed on the eighth day of May, A.D. 1882, eastward of the eleventh range of townships west of the second meridian and south of a line which may be described as follows: Commencing at a point where the line between townships twenty and twenty-one in the Dominion Lands system of survey intersects the western boundary of the province of Manitoba, thence westerly following the said line between townships twenty and twenty-one to its intersection with the line between ranges seven and eight west of the second meridian, thence northerly along the line between ranges seven and eight to its intersection with the line between townships twenty-two and twenty-three, thence westerly along the line between the said townships twenty-two and twenty-three to its intersection with the line between ranges ten and eleven west of the second meridian in the Dominion Lands system of survey;

2. **Yorkton district.**—The registration district of "Yorkton," comprising that part of the said provisional district of Assiniboia, eastward of the eleventh range of townships west of the second meridian and north of the north boundary of the registration district of Moosomin;

3. **Regina district.**—The registration district of "Regina," comprising that part of the said provisional district of Assiniboia west of the registration district of Moosomin and east of the west line of the twenty-third range of townships west of the second meridian;

4. **Moose Jaw district.**—The registration district of "Moose Jaw," comprising that part of the provisional district of Assiniboia west of the registration district of Regina and east of the west line of the twenty-third range of townships west of the third meridian;

5. Medicine Hat district.—The registration district of "Medicine Hat," comprising all that portion of the said provisional district of Assiniboia west of the registration district of Moose Jaw;

6. Macleod district.—The registration district of "Macleod," comprising all that portion of the provisional district of Alberta as defined by the said Order of the Privy Council lying south of township seventeen;

7. Calgary district.—The registration district of "Calgary," comprising all that part of the said provisional district of Alberta lying between townships sixteen and forty-three;

8. Edmonton district.—The registration district of "Edmonton," comprising all that portion of the said provisional district of Alberta lying north of township forty-two;

9. Battleford district.—The registration district of "Battleford" comprising all that portion of the provisional district of Saskatchewan as defined by the said Order of the Privy Council lying west of the fifth range of townships west of the third meridian;

10. Prince Albert district.—The registration district of "Prince Albert," comprising all that portion of the said provisional district of Saskatchewan lying east of the Battleford registration district.

(2) **New districts.**—*The Lieutenant Governor in Council shall have power to alter the boundaries of any registration district now or hereafter established by adding thereto or taking therefrom; and to establish new districts and to appoint registration clerks therefor who shall hold office during pleasure; and designate at what places the offices of such clerks shall be kept.* C. O. 43, s. 2, and 1900 c. 12, s. 1.

REGISTRATION CLERKS.

3. Present clerks continued.—The registration clerks for the existing registration districts are hereby continued in office and shall severally hold office during pleasure and their offices shall be kept at places to be designated by the Lieutenant Governor in Council.

(2) **Appointments by Lieutenant Governor in Council.**—In the event of any vacancy occurring in the office of registration clerk by reason of death, resignation or otherwise the vacancy shall be filled by the Lieutenant Governor in Council. C. O. 43, s. 3.

4. The registration clerks under this Ordinance shall keep their respective offices open between the hours of ten in the forenoon and four in the afternoon on all days excepting Sundays and holidays and except on Saturdays and during the period of vacation prescribed by *The Judicature Ordinance* when the same shall be closed at one o'clock in the afternoon and during office hours only shall registrations be made. C. O. 43, s. 4.

5. No registration clerk shall draw or prepare any document or conveyance which may be filed or registered in his office under the provisions of this or any other Ordinance. C. O. 43, s. 5.

MORTGAGES AND SALES OF CHATTELS, FORM AND REGISTRATION.

6. Mortgages unaccompanied by delivery and change of possession of goods.—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels which is not accompanied by an immediate delivery and an actual and continued change

of possession of the things mortgaged shall within thirty days from the execution thereof be registered as hereinafter provided together with the affidavit of a witness thereto of the due execution of such mortgage or conveyance and also with the affidavit of the mortgagee or one of several mortgagees or the agent of the mortgagee or mortgagees if such agent is aware of all the circumstances connected therewith and is properly authorised by power in writing to take such mortgage in which case a copy of such authority shall be attached thereto (save as hereinafter provided under section 21 hereof) such last mentioned affidavit stating that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor or of preventing the creditors of such mortgagor from obtaining payment of any claim against him; and every such mortgage or conveyance shall operate or take effect upon, from and after the day and time of the filing thereof. C. O. 43, s. 6.

7. Mortgage may be in form appended.—Except as to cases provided in the next following section of this Ordinance a mortgage or conveyance intended to operate as a mortgage of goods and chattels may be made in accordance with form A in the schedule of this Ordinance. C. O. 43, s. 7. (b)

8. Mortgage to secure future advances or to indemnify indorsers, etc.—In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances or in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any bills or promissory notes or any other liability by him incurred for the mortgagor not extending for a longer period than two years from the date of the mortgage and in case the mortgage is executed in good faith and sets forth fully by recital or otherwise the terms, nature and effect of the agreement and the amount of liability intended to be created and in case such mortgage is accompanied by the affidavit of a witness thereto of the due execution thereof and by the affidavit of the mortgagee or one of several mortgagees or in case the agreement has been entered into and the mortgage taken by an agent duly authorised by writing to make such agreement and take such mortgage, in which case a copy of such authority shall be attached thereto, and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage and that such mortgage is executed in good faith and for the express purpose of securing the mortgagee repayment of his advances or against the payment of the amount of his liability for the mortgagor as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor nor to prevent such creditors from recovering any claims which they may have against such mortgagor and in case such mortgage is registered as hereinafter provided within thirty days

from the execution thereof the same shall be as valid and binding as mortgages mentioned in the sixth section of this Ordinance. C. O. 43, s. 8.

9. Sale of goods not attended by delivery and change of possession.—Every sale, assignment and transfer of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold shall be in writing and such writing shall be a conveyance under the provisions of this Ordinance and shall be accompanied by an affidavit of a witness thereto of the due execution thereof and an affidavit of the bargainee or one of several bargainees or of the agent of the bargainee or bargainees duly authorised in writing to take such conveyance (a copy of which authority shall be attached to the conveyance) that the sale is *bona fide* and for good consideration as set forth in the said conveyance and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor; and such conveyance and affidavits shall be registered as hereinafter provided within thirty days from the execution thereof otherwise the sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. C. O. 43, s. 9.

10. Registration only affects district where made.—Such registration shall only have effect in the registration district wherein such registration has been made. C. O. 43, s. 10.

11. Omission to register or false statement of consideration.—In case such mortgage or conveyance and affidavits are not registered as hereinbefore provided or in case the consideration for which the same is made is not truly expressed therein the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration. C. O. 43, s. 11.

12. Description of property.—Assignment for benefit of creditors.—All the instruments mentioned in this Ordinance whether for the mortgage or sale, assignment or transfer of goods and chattels shall contain such sufficient and full description thereof that the same may be readily and easily known and distinguished except in the case of assignments for the general benefit of creditors in which case the description shall be sufficient if it is in the following words: "All my personal property which may be seized and sold under execution," or words to that effect. C. O. 43, s. 12.

13. Registration to be in district where property situate.—The proper registration officer for instruments being mortgages and transfers of personal property shall be the clerk of the registration district in which the property described in the mortgage or transfer is at the time of the execution of the instrument; such registration clerks shall file all such instruments presented to them respectively for that purpose and shall indorse thereon the time of receiving the same in their respective offices and the same shall be kept there for the inspection of the public subject to the payment of the proper fees. C. O. 43, s. 13.

14. Clerk to enter instruments in a book.—Every such clerk shall number each instrument or copy filed in his office and shall enter in alphabetical order in a book to be provided by him the names of all the parties to such instrument with the number in-

dorsed thereon opposite to each name; and such entry shall be repeated alphabetically under the name of every party thereto. C. O. 43, s. 14.

CONVEYANCES OF GROWING OR FUTURE CROPS.

15. Securities on crops.—No mortgage, bill of sale, lien, charge, incumbrance, conveyance, transfer or assignment hereafter made, executed or created and which is intended to operate and have effect as a security shall in so far as the same assumes to bind, comprise, apply to or affect any growing crop or crop to be grown in future in whole or in part be valid except the same be made, executed or created as a security for the purchase price and interest thereon of seed grain.

(2) **Crop mortgages to secure price of seed grain.**—Every mortgage or incumbrance upon growing crops or crops to be grown, made or created to secure the purchase price of seed grain shall be held to be within the provisions of this Ordinance and the affidavit of *bona fides* among the other necessary allegations shall contain a statement that the same is taken to secure the purchase price of seed grain.

(3) **Crop must be sown within one year from mortgage.**—No mortgage or incumbrance to secure the price of seed grain shall be given upon any crop which is not sown within one year of the date of the execution of the said mortgage or incumbrance.

(4) **Separate register of seed grain mortgages.**—Every registration clerk shall keep a separate register of such seed grain mortgages and shall be entitled to receive the same fees for his services as provided for under section 33 of this Ordinance.

(5) **Seed grain mortgages preferential security.**—Particulars to be given.—Every such seed grain mortgage so taken and filed shall not be affected by or subject to any chattel mortgage or bill of sale previously given by the mortgagor or by any writ of execution against the mortgagor in the hands of the sheriff at the time of the registration of such seed grain mortgage but such seed grain mortgage shall be a first and preferential security for the sum therein mentioned; the date of the purchase of seed grain, the number of bushels and price per bushel must be stated in the mortgage as well as in the affidavit of *bona fides*. C. O. 43, s. 15.

PROCEDURE UNDER MORTGAGE ON DEFAULT.

16. Cause for seizure by mortgagee.—Unless it is otherwise specially provided therein goods and chattels assigned under a mortgage or conveyance intended to operate as a mortgage of goods and chattels shall be liable to be seized or taken possession of by the grantee for any of the following causes:

1. **Default in payment or performance of agreements.**—If the grantor shall make default in payment of the sum or sums of money thereby secured at the time therein provided for payment or in the performance of any covenant or agreement contained in the mortgage or conveyance intended to operate as a mortgage and necessary for maintaining the security;

2. **Removal of goods.**—If the grantor shall without the written permission of the grantee either remove or suffer the goods or any

of them to be removed from the registration district within which they are situate;

3. **Rent or taxes.**—If the grantor shall suffer the said goods or any of them to be distrained for rent, rates or taxes or shall suffer the said goods or any of them to be liable to seizure for rent by reason of default of the grantor in paying the same when due;

4. **Execution.**—If execution shall have been levied against the goods of the grantor under any judgment at law;

5. **Attempt to dispose of goods.**—If the grantor shall attempt to sell or dispose of or in any way part with the possession of the said goods. C. O. 43, s. 16.

RENEWAL OF MORTGAGES.

17. **Mortgage filed to cease to be valid after two years unless renewed.**—Every mortgage filed in pursuance of this Ordinance shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers or mortgagees in good faith for valuable consideration after the expiration of two years from the filing thereof unless within thirty days next preceding the expiration of the said term of two years a statement exhibiting the interest of the mortgagee, his executors, administrators or assigns in the property claimed by virtue thereof and a full statement of the amount still due for principal and interest thereon and of all payments made on account thereof is filed in the office of the registration clerk of the district where the property is then situate with an affidavit of the mortgagee or of one of several mortgagees or of the assignee or one of several assignees or of the agent of the mortgagee or assignee or mortgagees or assignees duly authorised for that purpose, as the case may be, stating that such statements are true and that the said mortgage has not been kept on foot for any fraudulent purpose, which statement and affidavit shall be deemed one instrument. C. O. 43, s. 17, and 1900 c. 12, s. 2.

18. **Renewal of chattel mortgage.**—Such statement and affidavit shall be in the following form or to the like effect:

STATEMENT exhibiting the interest of C.D. in the property mentioned in the chattel mortgage dated the _____ day of _____ A.D. 1____, made between A.B. of _____ of the one part and C.D. of _____ of the other part and filed in the office of the registration clerk of the registration district of _____ (as the case may be) on the _____ day of _____ 1____, and of the amount due for principal and interest thereon and of all payments made on account thereof.

The said C.D. is still the mortgagee of the said property and has not assigned the said mortgage (or the said E.F. if the assignee of the said mortgage by virtue of an assignment thereof from the said C.D. to him dated the _____ day of _____ 1____, or as the case may be).

No payments have been made on account of the said mortgage (or the following payments and no other have been made on account of the said mortgage:

1____. —Jan. 1—Cash received \$ _____)
The amount still due for principal and interest on the said mortgage is the sum of _____ dollars computed as follows:

(Here give the computation.)

C.D.

To Wit:
NORTH-WEST TERRITORIES }

I, _____ of _____, the mortgagee named in the chattel mortgage mentioned in the foregoing (or annexed) statement (or assignee of _____ the mortgagee named in the chattel mortgage mentioned in the foregoing or annexed statement, *as the case may be*) make oath and say:

1. That the foregoing (or annexed statement) is true.
2. That the chattel mortgage mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at
in the North-West Territories, }
this _____ day of _____ 1 }

C. O. 43, s. 18.

19. Further renewal yearly after first renewal.—Another statement in accordance with the provisions of section 17 hereof duly verified as required by that section shall be filed in the office of the registration clerk of the district where the property is then situate within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the said section 17 and in default thereof such mortgage shall cease to be valid as against the creditors of the person making the same and as against purchasers and mortgagees in good faith for valuable consideration and so on from year to year; that is to say another statement as aforesaid duly verified shall be filed within thirty days next preceding the expiration of one year from the day of the filing of the former statement and in default thereof such mortgage shall cease to be valid as aforesaid. C. O. 43, s. 19.

20. Personal representative or assignee.—Filing assignments.—The affidavit required by section 17 of this Ordinance may be made by any next of kin, executor or administrator of any deceased mortgagee or by an assignee claiming by or through any mortgagee or any next of kin, executor or administrator of any such assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee the assignment or the several assignments through which such assignee claims shall be filed in the office in which the mortgage is originally filed at or before the time of such refiling by such assignee, next of kin, executor or administrator of such assignee. C. O. 43, s. 20.

AGENTS AUTHORITY TO TAKE CONVEYANCES.

21. Authority for taking instruments may be general.—An authority for the purpose of taking or renewing a mortgage or conveyance intended to operate as a mortgage or sale, assignment or transfer of goods and chattels under the provisions of this Ordinance may be a general one to take and renew all or any mortgages or conveyances to the mortgagee or bargainee; and provided such general authority is duly filed with the clerk it shall not be necessary to attach a copy thereof to any mortgage filed. C. O. 43, s. 21.

22. "Mortgagee" to include agent or manager of company.—For the purpose of making the affidavit of *bona fides* required by sections 6, 8 and 9 of this Ordinance and the affidavit required by section 17 of this Ordinance the expressions "mortgagee," bar-

ginee," or "assignee" shall, in addition to their primary meaning, mean and include the agent or manager of any mortgagee, bargainee or assignee being an incorporated company. C. O. 43, s. 22.

OMISSIONS AND ERRORS.

23. Rectification of omissions and errors.—Subject to the rights of third persons accrued by reason of such omissions as are hereinafter defined any judge of the Supreme Court of the Territories on being satisfied that the omission to register a mortgage or other transfer of personal property or any authority to take or renew the same or any statement and affidavit of renewal thereof within the time prescribed by this Ordinance or the omission or misstatement of the name, residence or occupation of any person was accidental or due to inadvertence or impossibility in fact, may in his discretion order such omission or misstatement to be rectified by the insertion in the register of the true name, residence or occupation or by extending the time for such registration on such terms and conditions if any as to security, notice by advertisement or otherwise or as to any other matter as he thinks fit to direct. C. O. 43, s. 23.

ASSIGNMENT OF MORTGAGES.

24. Filing assignments of mortgages.—In case any registered chattel mortgage has been assigned such assignment may upon proof by the affidavit of a subscribing witness be numbered and entered in the book mentioned in section 14 hereof in the same manner as a chattel mortgage and the proceedings authorised by sections 26 and 27 of this Ordinance may and shall be had upon a certificate of the assignee proved in manner aforesaid. C. O. 43, s. 24.

DISCHARGE OF MORTGAGE.

25. Discharge of mortgage.—Where any mortgage of goods and chattels is registered under the provisions of this Ordinance such mortgage may be discharged by the filing in the office in which the same is registered of a certificate signed by the mortgagee, his executors or administrators in form B in the schedule hereto or to the like effect. C. O. 43, s. 25.

26. Entry and indorsement of discharge of mortgage.—The officer with whom such chattel mortgage is filed upon receiving such certificate duly proved by the affidavit of a subscribing witness shall at each place where the number of such mortgage has been entered with the name of any of the parties thereto in the book kept under section 14 of this Ordinance or wherever otherwise in the said book the said mortgage has been entered, write the words "Discharged by certificate number (*stating the number of certificate*);" and he shall also indorse the fact of such discharge upon the instrument discharged and shall affix his name to such indorsement. C. O. 43, s. 26.

27. Certificate of discharge.—Any person filing a discharge of mortgage or a partial discharge of mortgage as aforesaid shall be entitled to ask for and receive from such clerk a certificate (other than the certificate which might be indorsed on a copy or duplicate

of the mortgage as aforesaid) of such discharge or partial discharge in the form following or to the like effect:

North-West Territories }
Registration District of }

This is to certify that an instrument purporting to be a discharge in full (or a partial discharge of a certain chattel mortgage bearing date the _____ day of _____ and filed the _____ day of _____ following, made between A.B. of _____ as mortgagor and C.D. of _____ as mortgagee has been filed in the office of the clerk of the registration district of _____ on the _____ day of _____ (and in case of a partial discharge that the goods or property mentioned in such partial discharge consist of _____ describing the chattel or property)

E.M., Clerk.

C. O. 43, s. 27.

REMOVAL OF CHATTELS MORTGAGED.

28. Mortgaged goods not to be removed without notice.—

No goods or chattels under mortgage shall be removed into another registration district without a notice of the intention to remove be mailed post paid and registered to the mortgagee at his last known place of address not less than twenty days prior to such removal. C. O. 43, s. 28.

29. Removal of goods to another district.—In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the registration district in which they were at the time of the execution of the mortgage to another registration district before the payment and discharge of the mortgage a certified copy of such mortgage under the hand of the registration clerk in whose office it was first registered and of the affidavit and documents and instrument relating thereto filed in such office shall be filed with the registration clerk of the district to which such goods and chattels are removed within three weeks from such removal otherwise the said goods and chattels shall be liable to seizure and sale under execution and in such case the mortgage shall be null and void as against subsequent purchasers and mortgagees in good faith for valuable consideration as if never executed. C. O. 43, s. 29.

EVIDENCE CERTIFIED COPIES.

30. Certified copies.—Copies of any instrument filed this Ordinance certified by the registration clerk shall be received as *prima facie* evidence for all purposes as if the original instrument was produced and also as *prima facie* evidence of the execution of the original instrument according to the purport of such copy and the clerk's certificate shall also be *prima facie* evidence of the date and hour of registration and filing. C. O. 43, s. 30.

AFFIDAVITS.

31. Officers for oaths.—All affidavits and affirmations required by this Ordinance may be taken and administered by the registration clerk or any person whether in or out of the Territories au-

the interest then due on the _____ day of _____ A.D.
*(or whatever else may be the stipulated time or times for pay-
 ment).* And the said *A.B.* doth agree with the said *C.D.*
 that he will *(here insert terms as to insurance, payment of rent, collate-
 ral securities or otherwise which the parties may agree to for the main-
 tenance or defeasance of the security.)*

Provided always that the chattels hereby assigned shall not be
 liable to seizure or to be taken possession of by the said *C.D.* for
 any cause other than those specified in section 16 of *The Bills of
 Sale Ordinance* except as is otherwise specially provided herein.

In witness whereof the said *A.B.* has hereunto set his hand and
 seal.

Signed and sealed by the said *A.B.* }
 In the presence of me *E.F.* }
(Add name, address and occupation }
of witness.) } *A.B.*

FORM B.

(Section 25.)

DISCHARGE OF CHATTEL MORTGAGE.

To the registration clerk of the registration district of
 I, *A.B.*, of _____ do certify that _____ has
 satisfied all money due on or to grow due on a certain chattel
 mortgage made by _____ to _____ which
 mortgage bears date the _____ day of _____ A.D. 1
 and was registered *(or in case the mortgage has been renewed was
 renewed)* in the office of the registration clerk of the registration
 district of _____ on
 the _____ A.D. 1 _____ as
 number _____ *(here mention the day and date
 of registration of each assignment thereof and the names of the parties
 or mention that such mortgage has not been assigned as the fact may be)*
 and that I am the person entitled by law to receive the money; and
 that such mortgage is therefore discharged.

Witness my hand this _____ day of _____ A.D. 1
 Witness *(stating residence and* }
occupation) } *A.B.*
E.F.

AMENDMENT.

1900 c. 12.—An Ordinance to amend Chapter 43 of the Consoli-
 dated Ordinances 1898, intituled "An Ordinance respecting Mortgages
 and Sales of Personal Property."

[Assented to May 4, 1900.]

The Lieutenant Governor by and with the advice and consent of
 the Legislative Assembly of the Territories enacts as follows:

1. and 2. * * * *

3. Mortgages when new districts formed.—All chattel mort-
 gages relating to property within any newly established districts
 shall (until their renewal becomes necessary to maintain their force
 against creditors, subsequent purchasers or mortgagees in good
 faith) continue to be as valid and effectual in all respects as they
 would have been if the new district had not been established; but

in the event of a renewal of any such chattel mortgage after the establishment of such new district the renewal statement shall be filed in the office of the registration clerk of such new district together with a certified copy of the chattel mortgage to which such renewal statement relates and of any renewals thereof under the hand of the registration clerk in whose office the same were filed; and no chattel mortgage in force and filed at the date of the establishing of such new district shall lose its priority by reason of its not being filed in the office of the registration clerk of such new district prior to its renewal. 1900, c. 12, s. 3.

STATUTES OF ALBERTA, 1907.

CHAPTER 5.

(STATUTE LAW AMENDMENT ACT.)

10. Section 18 of *The Bills of Sale Ordinance* is amended by adding thereto the following subsections:

"2. **Provision for renewal of mortgage to secure debentures.**—Where such mortgage or conveyance is made as security for debentures and the by-law or resolution authorizing the issue of debentures, as a security for which the mortgage or conveyance was made, or a copy thereof, certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit of the secretary thereto attached or endorsed thereon, and having the corporate seal attached thereto, together with a copy of the mortgage or conveyance certified and verified as aforesaid is filed with the registrar of joint stock companies within the time limited for filing a renewal statement in accordance with section 17 hereof, it shall not be necessary to renew the said mortgage or conveyance, but the same shall in such case continue to be valid as if the same had been duly renewed as in this Ordinance provided."

"3. **Registrar of joint stock companies to keep a register of by-laws, etc.**—The registrar of joint stock companies shall keep an alphabetical register of all such by-laws, mortgages or conveyances indexed under the names of the companies executing the same, and the said register shall be open to inspection by any person on payment of such fees as may be from time to time prescribed by order in council in that behalf."

STATUTES OF SASKATCHEWAN, 1908.

CHAPTER 25.

AN ACT TO AMEND THE BILLS OF SALE ORDINANCE.

1. **C. O. 1898, s. 17 amended.**—Section 17 of the *Bills of Sale Ordinance* is hereby amended by inserting after the word "mortgage" in the first line thereof the words "or conveyance intended to operate as a mortgage" and by inserting after the word "mortgage" in the seventeenth line thereof the words "or conveyance."

2. **Section 23 amended.**—Section 23 of the said ordinance is

hereby amended by inserting before the word "on" in the third line thereof the words "or district court."

3. Section 29 amended.—Section 29 of the said Ordinance is hereby amended by adding thereto the following as subsection (2).

"(2). **Removal of goods into Saskatchewan.**—In the event of the permanent removal into Saskatchewan of goods and chattels subject to a mortgage or bill of sale made, executed or created without Saskatchewan from a place in which they were at the time of the execution of said mortgage or bill of sale, a copy thereof and of the affidavit and documents and instruments relating thereto proved to be a true copy by the affidavit of some person who has compared the same with the originals shall be filed with the registration clerk of the district to which such goods and chattels are removed within three weeks from such removal, otherwise the mortgagee or bargainee shall not be permitted to set up any right of property or right of possession to said goods and chattels against the creditors of the mortgagor or bargainor or against subsequent purchasers or mortgagees in good faith for valuable consideration."

4. New section 34 added.—The said Ordinance is hereby amended by adding thereto the following as section 34.

"**34. Act not applicable to railway companies.**—The provisions of this Act as to filing and registering bills of sale and chattel mortgages in the offices of the registration shall not apply to mortgages by railway companies including cars, equipment, rolling stock and other chattel property of railway companies, but such mortgages may be filed and registered in the office of the provincial secretary of the province of Saskatchewan and on such filing and registration shall have priority from the date of such filing and shall remain in force until the same have been discharged and satisfied and without the necessity of renewal or any affidavits of execution or *bona fides* and discharges of such mortgages may be registered in such office."

5. Section 33 of the said Act is hereby amended by adding thereto as subsection (2) thereof the following:

"**2. Altering and compromising fees.**—Notwithstanding anything herein contained the Lieutenant Governor in council may from time to time make provision for the alteration, changing or compromising the payment of any of the fees payable hereunder."

N. W. T. CONDITIONAL SALE ORDINANCE.

(C. O. 1898, C. 44).

AN ORDINANCE RESPECTING HIRE RECEIPTS AND CONDITIONAL SALES OF GOODS.

The Lieutenant Governor, by and with the advice and consent of the Legislative Assembly of the Territories enacts as follows:

1. Conditional sales of goods.—Whenever on a sale or bailment of goods of the value of \$15 or over it is agreed, provided or conditioned that the right of property or right of possession in whole or in part shall remain in the seller or bailor notwithstanding that the actual possession of the goods passes to the buyer or bailee the seller or bailor not be permitted to set up any such right of

property or right of possession as against any purchaser or mortgagee of or from the buyer or bailee of such goods in good faith for valuable consideration or as against judgments, executions or attachments against the purchaser or bailee unless such sale or bailment with such agreement, proviso or condition is in writing signed by the bailee or his agent and registered as hereinafter provided. Such writing shall contain such a description of the goods the subject of the bailment that the same may be readily and easily known and distinguished:

Proviso.—Provided that nothing in this section shall apply to any bailment where it is not intended that the property in the goods shall eventually pass to the bailee on payment of purchase money in whole or in part or the performance of some condition by the bailee. C. O. 44, s. 1.

2. Registration.—Such writing or a true copy thereof shall be registered in the office of the registration clerk for chattel mortgages in the registration district within which the buyer or bailee resides within thirty days of such sale or bailment and also in the registration district in which the goods are delivered or to which they may be removed within thirty days of such delivery or removal verified by the affidavit of the seller or bailor or his agent stating that the writing (or copy) truly sets forth the agreement between the parties and that the agreement therein set forth is *bona fide* and not to protect the goods in question against the creditors of the buyer or bailee as the case may be. C. O. 44, s. 2.

3, 4 and 5. * * * * *

6. Memorandum of satisfaction of seller.—The seller or bailor shall upon payment or tender of the amount due in respect of such goods or performance of the conditions of the bailment sign and deliver to any person demanding it a memorandum in writing stating shall thereupon operate to divest the seller or bailor of any further that his claims against the goods are satisfied and such memorandum interest or right of possession if any in the said goods. Any such memorandum if accompanied by an affidavit of execution of an attesting witness may be registered. C. O. 44, s. 6.

7. Retaking Possession.—In case the seller or bailor shall retake possession of the goods he shall retain the same in his possession for at least twenty days and the buyer, bailee or any one claiming by or through or under the buyer or bailee may redeem the same upon payment of the amount actually due thereon and the actual necessary expenses of taking possession. C. O. 44, s. 7.

8. Five days' notice of sale to be given.—The goods or chattels shall not be sold without five days notice of the intended sale being first given to the buyer or bailee or his successor in interest. The notice may be personally served or may in the absence of such buyer, bailee or his successor in interest be left at his residence or last place of abode or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse addressed to the buyer or bailee or his successor in interest at his last known post office address in Canada. The said five days or seven days may be part of the twenty days mentioned in section 7 hereof. C. O. 44, s. 8.

9. Copies of instrument to be evidence.—Copies of any instrument filed under this Ordinance certified by the registration clerk shall be received as *prima facie* evidence for all purposes as if the original instrument were produced and also as *prima facie* evi-

dence of the execution of the original instrument according to the purport of such copy. And the clerk's certificate shall also be *prima facie* evidence of the date and hour of registration or filing. C. O. 44, s. 9.

10. Registration fees.—The registration clerk shall be entitled to charge a fee of 25 cents for each registration; 10 cents for each search; 10 cents per 100 words for copies of documents and 25 cents for each certificate. C. O. 44, s. 10.

STATUTES OF SASKATCHEWAN, 1907.

CHAPTER 17.

AN ACT TO AMEND CHAPTER 44 OF THE CONSOLIDATED ORDINANCES, INTITULED "AN ORDINANCE RESPECTING HIRE RECEIPTS AND CONDITIONAL SALES OF GOODS."

[Assented to April 3, 1907.]

His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

1. Section 2 of chap. 44 C. O. repealed.—Section 2 of chapter 44 of *The Consolidated Ordinances* is hereby repealed and the following sections substituted therefor:

"2. New section 2.—Such writing or a true copy thereof shall be registered in the office of the registration clerk for chattel mortgages in the registration district within which the buyer or bailee resides within thirty days from the time of the actual delivery of such goods to the bailee or buyer; and in the event of such goods being delivered in a registration district other than that in which the buyer or bailee resides at the time of such delivery such writing or a true copy thereof shall also be registered within thirty days from the time of the actual delivery of such goods in the registration district in which such goods are delivered.

"(2) If such goods are after the delivery thereof removed by the buyer or bailee into another registration district a further registration shall be made in the registration district into which such goods are removed within sixty days after such removal.

"(3) Every such agreement or a true copy thereof shall upon every such registration be accompanied by an affidavit of the seller or bailor or his agent stating that the written agreement annexed thereto truly sets forth the agreement entered into between the parties and that the said agreement was entered into *bona fide* and not for the purpose of protecting the goods mentioned therein against the creditors of the buyer or bailee."

2. New section added as section 11.—By adding to the said Ordinance the following section as section 11:

"11. Nothing in the said Ordinance or in this Act shall apply to the sale or bailment of any manufactured goods or chattels of the value of \$15 or over which at the time of the actual delivery thereof to the buyer or bailee have the manufacturer's or vendor's name painted, printed or stamped thereon or plainly attached thereto by a plate or similar device; and such manufacturer or vendor (being the

seller or bailor of such goods or chattels) keeps an office in the province where inquiry may be had and information procured concerning the sale or bailment of such goods or chattels; and such manufacturer or vendor of the agent thereof does within five days after receiving a request so to do either made in person to him or by registered letter furnish to any applicant therefor a statement of the amounts (if any paid thereon) and the balance remaining unpaid; the person so inquiring shall if such inquiry is by letter give a name and post office address to which a reply may be sent; and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post office within the said five days addressed to the person inquiring at his proper post office address or where a name and address is given as aforesaid addressed to such person by the name and at the post office so given."

STATUTES OF SASKATCHEWAN, 1908.

CHAPTER 38, sec. 6.

6. Section 1 of an *Ordinance Respecting Hire Receipts and Conditional Sales of Goods* is amended by adding thereto the following proviso:

"And provided that nothing in this section shall apply in cases of conditional sales or bailments of incorporated companies to railway companies if the contract evidencing the conditional sale or bailment or a copy thereof certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit of the secretary thereto attached or endorsed thereon, and having the corporate seal attached thereto, is filed with the registrar of joint stock companies within thirty days from the execution thereof."

(2) Section 8 of the said ordinance is amended by striking out the word "five" wherever it occurs therein and substituting therefor the word "eight," and by striking out the word "seven" wherever it occurs therein and substituting therefor the word "ten."

STATUTES OF ALBERTA, 1908.

CHAP. 20, sec. 2.

2. The ordinance respecting Hire Receipts and Conditional sales of goods, is amended as follows:

(1) By adding to section 1 a proviso in the same words as that added by the Saskatchewan statutes of 1908, chap. 38, sec. 6, *supra*.

(2) By repealing section 2 and substituting therefor a section in the same words as the Saskatchewan statutes of 1907, chap. 17, sec. 1, *supra*.

MANITOBA

R. S. M., 1902, CHAP. 11.

AN ACT RESPECTING MORTGAGES AND SALES OF PERSONAL PROPERTY.

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INTERPRETATION OF EXPRESSIONS .. .	s. 2.
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"Clerk of County Court," "clerks," s-s. (b).	
"Judicial division," s-s. (c).	
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Certain to be in writing and registered, s. 3.	
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Mortgages to secure future advances or surety, s. 6.	
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WHEN SALES AND MORTGAGES TO TAKE EFFECT .. .	s. 9.
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Growing crops not to be mortgaged, except as security for seed-grain, s. 39.	
Priority of seed-grain mortgages, s. 40.	
To be within Act, s. 41.	
Separate register for, s. 42.	
Certificate of mortgage registered, s. 43.	

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as “The Bills of Sale and Chattel Mortgage Act.” 63 and 64 V., c. 31, s. 1.

INTERPRETATION.

2. Interpretation.—In this Act, unless the context otherwise requires,—

(a.) “**Actual and continued change of possession.**”—The expression “actual and continued change of possession” shall be taken to be such change of possession as is open and reasonably sufficient to afford public notice thereof;

(b.) “**County Court clerk.**”—The expression “clerk of the County Court” or “clerk” includes a deputy clerk or acting clerk;

(c.) “**Judicial division.**”—The expression “judicial division” includes such territory as by any provision in any statute or order in Council is now assigned to any County Court, or that shall hereafter by any Act or by order in Council be assigned to any County Court;

(d.) “**Creditors.**”—The expression “creditors” extends to and includes any assignee for the general benefit or creditors of the mortgagor or bargainor. 63 and 64 V., c. 31, s. 2.

SALES.

3. Sale of goods not attended with delivery to be registered.—Every sale made of goods and chattels, situated in the Province of Manitoba, not accompanied by an immediate delivery, followed by an actual and continued change of possession, of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of a subscribing witness thereto of the due execution thereof, and an affidavit by the bargainee or his agent that the sale is bona fide and for good or valuable consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and the conveyance and affidavits shall be registered, as by this Act provided, within twenty days from the date thereof, otherwise the sale shall be absolutely null and void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith for good or valuable consideration. 63 and 64 V., c. 31, s. 3; 1 and 2 Ed. 7., c. 28, s. 1.

4. Agreement for sale of goods to be deemed a sale.—Every covenant, promise or agreement for the sale of goods and chattels, in whatsoever words the same may be expressed, shall be deemed to be a sale of goods and chattels within the meaning of this Act, and, unless, accompanied by an immediate delivery, and followed by an actual and continued change of possession, of the said goods and chattels, shall be in writing, and such writing, accompanied by affidavits of execution and bona fides, shall be registered within the

time and in the manner prescribed in the next preceding section, otherwise the said covenant, promise or agreement shall be absolutely void as against creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith for good or valuable consideration. 63 and 64 V., c. 31, s. 4.

MORTGAGES.

5. Mortgage to be filed with affidavits.—Otherwise to be void.—Every mortgage, or conveyance intended to operate as a mortgage, of goods and chattels situate in the Province of Manitoba, which is not accompanied by immediate delivery and an actual and continued change of possession of the things mortgaged, shall be registered, as by this Act provided, within twenty days from the date thereof, together with an affidavit of a subscribing witness thereto of the due execution of such mortgage or conveyance, and with an affidavit of the mortgagee or his agent that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that it was executed in good faith, and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor or of preventing the creditors of such mortgagor from obtaining payment of any claim against him, otherwise such mortgage or conveyance shall be absolutely null and void as against the creditors of the mortgagor and as against subsequent purchasers or mortgagees in good faith for good or valuable consideration. 63 and 64 V., c. 31, s. 5; 1 and 2 Ed. 7, c. 28, s. 2.

6. Agreement for future advances.—In case of an agreement for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than two years from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any bills or promissory notes, or any other liability incurred by him for the mortgagor, not extending for a longer period than two years from the date of such mortgage, and in case the mortgage is executed in good faith and sets forth fully, by recital or otherwise, the terms, nature and effect of the agreement and the amount of the liability intended to be created, and in case such mortgage is accompanied by an affidavit of a subscribing witness thereto of the due execution thereof, and by the affidavit of the mortgagee or his agent stating that the mortgage truly sets forth the agreement entered into between the parties thereto, and truly states the extent of the liability intended to be created by such agreement and covered by such mortgage, and that such mortgage is executed in good faith and for the express purpose of securing to the mortgagee the repayment of his advances, or against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage is registered, as by this Act provided, within twenty days from the date thereof, the same shall be as binding as mortgages mentioned in the fifth section of this Act. 63 and 64 V., c. 31, s. 6, *part*.

7. Agreement for mortgage to be treated as a mortgage.—

Every covenant, promise or agreement entered into to make, execute or give a mortgage or conveyance intended to operate as a mortgage of goods and chattels, in whatever words the same may be expressed, shall be deemed to be a mortgage or conveyance within the meaning of this Act, and, unless accompanied by an immediate delivery and an actual and continued change of possession of the goods and chattels mortgaged, shall be registered within the time and in the manner prescribed in the next preceding section, together with affidavits of bona fides and execution, otherwise such covenant, promise or agreement shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for good or valuable consideration. 63 and 64 V. c. 31, s. 7.

VERBAL AGREEMENTS FOR SALE OR MORTGAGE.

8. Verbal agreements invalid.—

Every verbal agreement to the effect mentioned in the fourth and seventh sections of this Act, and not reduced to writing, shall be absolutely null and void to all intents and purposes whatsoever, as against creditors or subsequent purchasers or mortgagees in good faith for good or valuable consideration. 63 and 64 V., c. 31, s. 8.

WHEN SALES AND MORTGAGES SHALL TAKE EFFECT.

9. When instruments take effect.—

Every sale or mortgage or agreement for sale or mortgage of goods and chattels made, executed or given under the provisions of this Act shall only be operative and take effect, except as between the parties thereto, from and after the day and time of the registration thereof as required by this Act. 63 and 64 V., c. 31, s. 9.

DESCRIPTION OF GOODS.

10. Description of goods.—

All the instruments mentioned in this Act for the sale or mortgage (or for the agreement for the sale and mortgage) of goods and chattels shall contain such sufficient and full description thereof that such goods and chattels may be thereby readily and easily known, distinguished and identified. 63 and 64 V., c. 31, s. 10.

AFFIDAVITS.

11. Affidavits, before whom sworn.—

All affidavits required by this Act may be taken and administered by any justice of the peace in Manitoba, or by any of the persons authorized by "The Manitoba Evidence Act" to take affidavits in Manitoba. 63 and 64 V., c. 31, s. 11.

12. By whom sworn.—

All affidavits of bona fides required by this Act may be made by any one of two or more bargainees or mortgagee, and if by an agent the same shall state that he is aware of all the circumstances connected with the sale or mortgage, as the case may be. 63 and 64 V., c. 31, s. 12.

ASSIGNMENTS.

13. Assignment of mortgages, &c.—Any assignment of a chattel mortgage may be filed in the office in which the mortgage is filed accompanied by an affidavit of the due execution of such assignment and payment of the same fee as is required on filing the chattel mortgage (as amended by 7-8 Edw. VII, c. 1, s. 2.)

REGISTRATION.

14. Where to be registered.—The instruments mentioned in the preceding sections of this Act shall be registered in the office of the clerk of the County Court of the judicial division where the property sold or mortgaged, or agreed to be sold or mortgaged, is at the time of the execution of such instruments; and every such clerk shall register all such instruments presented to him for that purpose, and shall at the time of his receipt thereof indorse thereon the day, hour and year of receiving the same in his office. 63 and 64 V., c. 31, s. 14.

15. Time for registration.—No instruments shall be received or registered by any County Court clerk after the time limited by this Act for the registration thereof, and the words "within twenty days from the date thereof," defining the time within which such instruments shall be registered, shall be deemed to exclude either the first or the last day. 63 and 64 V., c. 31 s. 15, *part*.

16. Where time expires on Sunday.—Where, under the provisions of this Act, the time for registering any instrument mentioned in this Act expires on a Sunday, or other day upon which the office in which the registering is to be made is closed, and by reason thereof the registering cannot be made or done on that day, the registering shall, so far as regards the time of doing or making the same, be held to be duly done or made if done or made on the day on which the office shall next be open. 63 and 64 V., c. 31, s. 16.

17. Manner of registration.—County Court clerks shall number every instrument registered under the provisions of this Act, and shall enter in alphabetical order, in books to be provided them by the Municipal Commissioner, the names of all parties to such instruments with the numbers indorsed thereon opposite to each name; and such entry shall be repeated alphabetically under the name of every party thereto. 63 and 64 V., c. 31, s. 17.

18. Books to be open to inspection.—Every person shall have access to and be entitled to inspect the several books of the County Courts, containing records or entries of instruments registered under the provisions of this Act; and no person desiring such access or inspection shall be required, as a condition to his right thereto, to furnish the names of the parties in respect of whom such access or inspection is sought; and all clerks of the County Courts of the Province shall respectively, upon demand or request, produce for inspection any instrument filed in their respective offices or of which records or entries are by law required to be kept in such several books aforesaid. 63 and 64 V., c. 31, s. 18.

19. Certified copies as evidence.—A copy of any original instrument registered or statement made under the provisions of this Act, certified to by the clerk in whose office the same has been registered, under the seal of the Court, shall be received in evidence

in all Courts, but only of the fact that the instrument or statement was received and registered according to the indorsement of the clerk thereon and of no other fact; and in all cases the original indorsement by the clerk, made in pursuance of this Act upon any such instrument, shall be received in evidence only of the fact stated in the indorsement. 63 and 64 V., c. 31, s. 19:

RENEWALS OF MORTGAGES.

20. Mortgages to be renewed within two years from date of registration.—Every mortgage registered in pursuance of this Act shall cease to be valid, as against the creditors of the person or persons making the same and against subsequent purchasers and mortgagees in good faith for good or valuable consideration, after the expiration of two years from the day of the registration thereof, unless, within thirty days next preceding the expiration of the said term of two years, a statement exhibiting the interest of the mortgagee, his executors, administrators or other assigns, in the property claimed by said mortgage, and showing the amount still due for principal and interest thereon, and showing all payments on account thereof, with an affidavit of the mortgagee, or one of several mortgagees, or of the assignee or one of several assignees, or of the agent of the mortgagee or assignee, or mortgagees or assignees (as the case may be), that the statement is true, and that the mortgage has not been kept alive for any fraudulent purpose, is filed in the office of the clerk of the County Court wherein such mortgage was originally registered (except in case the goods and chattels mortgaged, or the mortgage, shall have been removed to another judicial division or other judicial divisions, in which case such statement and affidavit shall be filed in the County Court office for such other division.) For the purpose of filing, the statement and affidavit shall be deemed one instrument. 63 and 64 V., c. 31, s. 21.

21. And every two years thereafter.—Another statement in accordance with the provisions of the last preceding section, and likewise verified, shall be filed in the office of the clerk of the County Court of the judicial division wherein the mortgage was originally registered, except as aforesaid, within thirty days next preceding the expiration of the said term of two years from the day of the registering of the statement required by said last preceding section, otherwise such mortgage shall cease to be valid as against creditors of the person or persons making the same, and as against purchasers and mortgagees in good faith for good or valuable consideration; and so on every two years, as long as it is desired to keep such mortgage alive. 63 and 64 V., c. 31, s. 22.

22. Affidavit for renewal, by whom to be made.—The affidavits required by the two last preceding sections may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any assignee claiming by or through any mortgagee or any next of kin, executor or administrator of any such assignee, or by the agent of such next of kin, executor, administrator or assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee, or by the agent of such next of kin, executor, administrator or assignee, the assignment or the several assignments through which such assignee claims shall be registered in the office in which the mortgage is registered, except as aforesaid, at or before the time of such re-filing

MAN. BILLS OF SALE ACT.

by such assignee, next of kin, executor or administrator of such assignee. 63 and 64 V., c. 31, s. 23.

23. Registration of same.—All renewals of mortgages under the provisions of this Act shall be duly and punctually recorded by County Court clerks in some one or more of the books required to be kept under the provisions of the seventeenth section hereof. All assignments of mortgages shall likewise be similarly recorded. 63 and 64 V., c. 31, s. 24.

24. Time for filing renewals limited.—No renewals of mortgages shall be received or registered by any County Court clerk after the time limited by this Act. 1 and 2 Ed. VII., c. 28, s. 3.

(a) Subject to the rights of third persons, accrued by reason of such omissions or mis-statements as are hereinafter defined, any judge of the County Court in which any such instrument was or should have been registered, on being satisfied that the omission to register a mortgage or other transfer of personal property, or any assignment thereof, within the time prescribed by this Act, or the omission or mis-statement of the name, residence or occupation in the register of the true name, residence or occupation or due to inadvertence or impossibility in fact, may in his discretion order such omission or mis-statement to be rectified by the insertion in the register of the true name residence or occupation, or by extending the time for such registration, on such terms and conditions, if any, as to security, notice by advertisement or otherwise, or as to any other matter as he thinks fit to direct (added by 7-8 Ed. VII., c. 1, s. 1.)

DISCHARGE OF MORTGAGES.

25. Discharge of mortgages.—Where any mortgage of goods and chattels is registered under the provisions of this Act, such mortgage may be discharged or partially discharged by filing, in the office of the clerk of the County Court of the judicial division in which such mortgage is in force and effect, a certificate signed by the mortgagee, his executor or administrator, or by his or their assignee under an assignment or assignments registered as by this Act provided, or by the executor or administrator of any such assignee or by any of the class of persons authorized to make affidavits under the provisions of the twenty-second section hereof, which certificate shall be in the form following, or to the like effect:—

FORM OF DISCHARGE.

To the Clerk of the County Court of
I, A.B., of _____, do certify that
C.D., of _____, has satisfied all money
(or the sum of _____ dollars on account of the
amount) due or to grow due on a certain chattel mortgage made by
him (or by one E.F., *as the case may be*) to me (or to one G.H.,
and duly assigned to me); which mortgage bears date the
day of _____, 19____, and was registered (or, *in case the mortgage*
has been renewed under the twentieth and twenty-first sections of this Act,
was re-filled) in the office of the clerk of the County Court of
_____ day of _____
on the _____
as No. _____ (here mention the date of registering each assign-

ment, again naming the parties if more than one assignment, or mention that such mortgage has not been assigned, or further assigned, as the case may be); and that I am the person entitled by law to receive the money; and that such mortgage is therefore discharged (or and that, describing the chattel or chattels to be released, of the goods and chattels mentioned in such mortgage, is or are hereby released.) 62 and 63 V., c. 31, s. 26.

26. Registration of discharge.—The said certificate of discharge or partial discharge shall have indorsed thereon an affidavit of the subscribing witness to the execution thereof by the person entitled or empowered by this Act to sign the same, which shall also state the date on which the same was executed; and such certificate of discharge or partial discharge shall have no force and effect, except as between the parties, until the same has been registered as by this Act provided. 63 and 64 V., c. 31, s. 27.

27. Entry thereof.—The clerk of the County Court of the judicial division with whom the chattel mortgage is registered or in which the same is in force and effect, upon receiving such certificate of discharge or partial discharge, shall enter opposite to or across the original entry of registering the mortgage, in the book or books kept for that purpose as aforesaid, the following words "discharged" (or "partially discharged") "by certificate number" (stating the number of the certificate), to which the County Court clerk shall affix his name; and he shall also indorse the fact of the discharge or partial discharge upon the instrument affected, to which he shall also affix his name. 63 and 64 V., c. 31, s. 28.

28. Certificate from clerk of discharge.—Any person registering a discharge or partial discharge of mortgage, as aforesaid, shall be entitled to ask for and, upon payment of the statutory fee in that behalf, receive from the clerk a certificate of such discharge or partial discharge of such mortgage in the form following or to the like effect:—

CERTIFICATE OF DISCHARGE OF MORTGAGE.

Province of Manitoba, }
County Court of }

This is to certify that an instrument purporting to be a discharge in full (or a partial discharge) of a certain chattel mortgage bearing date the day of and registered the day of , made between A.B., of as mortgagor, and C.D., of as mortgagee, has been filed in the office of the County Court of on this day of (and, in case of a partial discharge, that the goods or property mentioned in such partial discharge consist of, describing the chattels or property).

Given under my hand and the seal of said Court.

E.M.,

[SEAL.]

Clerk.

REMOVAL OF GOODS.

29. If mortgaged goods removed to another division, copy of mortgage to be filed in County Court office thereof.—In the event of the permanent removal of goods and chattels mortgaged, from one judicial division, in which the goods and chattels were at the time of the execution of the mortgage, to another judicial division or other judicial divisions, before the payment and discharge of the mortgage, a certified copy of the mortgage, under the hand of the clerk in whose office it was first registered and under the seal of the Court, and of the affidavits and documents and instruments relating thereto registered in such office, shall, within six months from such removal, be registered with the clerk of the County Court of the judicial division to which the goods and chattels, or any portion thereof, are removed; otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against creditors of the mortgagor and against subsequent purchasers and mortgagees in good faith for good or valuable consideration, as if never executed. 63 and 64 V., c. 31, s. 25, *part*.

30. Record of removal.—The clerk of the County Court of the judicial division from which any goods and chattels mortgaged shall be removed to another judicial division or other judicial divisions, shall note in some one or more of the books required to be kept by him under the provisions of the seventeenth section hereof, the fact of the delivery to any mortgagee or assignee of the certified copy of the mortgage for the purpose in the last preceding section mentioned. 63 and 64 V., c. 31, s. 35, s-s. (a); 1 Ed. 7, c. 22, s. 3.

31. Renewal required.—Every mortgage upon goods and chattels removed from one judicial division to another judicial division or other judicial divisions shall be renewed in like manner as required by the twentieth and twenty-first sections hereof to all intents and purposes as if such mortgage in the first instance had been first registered in the County Court office or offices of the judicial division or divisions in which said goods and chattels are at the time of such renewal. 63 and 64 V., c. 31, s. 25, s-s. (b).

CHANGES IN JUDICIAL DIVISIONS.

32. Provision for mortgages, &c., on goods on land taken out of one judicial division to form part of another.—In all cases where a portion of any judicial division has been or shall be hereafter taken away or withdrawn from said judicial division to form a part of a new judicial division, it shall be the duty of the clerk of every such judicial division so reduced in extent of territory to transfer to the clerk of the new judicial division so created or set apart, all bills of sale, chattel mortgages and other documents registered or filed under this Act or any former Act requiring the registration or filing of such instruments and relating to any goods or chattels, growing grain or other property situated in such part of the territory so taken away or withdrawn from his jurisdiction, whenever so requested by any of the parties interested in any such bills of sale, chattel mortgages or other instruments, and upon payment of a fee of twenty-five cents for each such instruments so transferred, which fee shall include the postage thereon; and every County Court clerk who shall so transfer any such instrument shall

make a proper entry of such transfer in the books of his office; and every County Court clerk receiving any such instrument so transferred shall file the same in his office and make the proper entries thereof in his books on payment of a fee of twenty-five cents. 1 Ed. VII., c. 22, s. 2, *part*; 1 and 2 Ed. VII., c. 28, s. 4; *part*.

33. Limitation of time for transfer of instruments to another office.—Unless such transfer shall be made and completed on behalf of any of said interested parties within six months from the time of such change of territory, the goods and chattels covered by any of such instruments and situated in the territory so removed shall be liable to seizure and sale under execution, and in such case the bill of sale, chattel mortgage or other instrument shall, as to such goods, be null and void as against creditors of the bargainor or mortgagor and against subsequent purchasers and mortgagees in good faith for good or valuable consideration as if never executed. 1 and 2 Ed. VII., c. 28, s. 4, *part*.

34. Provisions for cases in which instrument relates to goods in two judicial divisions.—In case any such instrument relates to goods and chattels, some of which are in the territory remaining in such first mentioned judicial division, and others in such new judicial division, a certified copy of such instrument and of the affidavits and documents and instruments relating thereto, under the seal of the Court and under the hand of the clerk in whose office it may be on file, shall be prepared and transferred, on request of any of the parties interested therein, to the clerk of such new judicial division in lieu of the original instrument or instruments, in order that all the goods and chattels covered by any such instrument or instruments may continue to be bound thereby in the said respective judicial divisions. The clerk for preparing such copy or copies shall be entitled to the usual fees therefor, to be paid by the mortgagee or person requesting such transfer. 1 and 2 Ed. VII., c. 28, s. 4, *part*.

35. Provision for cases in which a judicial division is abolished.—When the territory comprised in any judicial division becomes absorbed by the transference by an order of the Lieutenant Governor in Council of the whole of such territory to a contiguous judicial division or divisions, and the judicial division comprising such territory thus transferred becomes abolished, all the bills of sale, chattel mortgages and other instruments and documents registered or on file in the office of such judicial divisions under this Act or any former Act requiring the registration or filing of such instruments, and all books of record relating thereto, shall be removed by the inspector of County Courts, or other person designated by him, to the office or offices of such other judicial division or divisions as shall be directed by the order in Council authorizing the change so made; and all bills of sale, chattel mortgages and other instruments originally registered or filed under this Act or such other Act in the judicial division so abolished, covering goods or chattels situated in the territory so transferred to the judicial division to which such instruments shall have been so removed, shall be deemed to have been re-registered in such judicial divisions to all intents and purposes, and all the requirements of this Act relating to such instruments shall, for all the purposes of this Act, be deemed to have been complied with 1 and 2 Ed. VII., c. 28, s. 5, s-s. 1.

36. Orders in Council in such a case.—The Lieutenant Gov-

ernor in Council may from time to time make such further provisions and directions respecting any of the matters referred to in the last preceding section as may be deemed necessary, and the provisions of any order of the Lieutenant Governor in Council already made in such a case are hereby ratified and confirmed. 1 and 2 Ed. VII, c. 28, s. 5, s-s. 2.

FEEES OF CLERKS OF COUNTY COURTS.

37. Clerks fees.—For services under this Act County Court clerks shall be entitled to receive the following fees:—

(a) For filing each instrument and affidavit, and entering the same in a book as provided by the seventeenth and twenty-third sections of this Act, fifty cents;

(b) For a general search, twenty-five cents;

(c) For filing each certificate of discharge or partial discharge, and making all proper entries in connection therewith, fifty cents;

(d) For any certificate of registration or discharge or partial discharge, twenty-five cents;

(e) For any certificate under the nineteenth section of this Act, twenty-five cents;

(f) For the production and inspection of any instrument or statement registered or filed under the provisions of this Act, or any former Act on the same subject, ten cents;

(g) For copies of any document, with certificate, registered or filed under this Act, or any former Act on the same subject, ten cents for every hundred words;

(h) For any other service not herein specially provided for, such sum as may be determined by the Lieutenant Governor in Council. 63 and 64 V., c. 31, s. 20.

MISCELLANEOUS PROVISIONS.

38. Affidavits when grantee or mortgagee is a corporation.—In case a grantee or mortgagee under the third and fifth sections of this Act be a corporation, the affidavits of bona fides required under such sections may be made by the president or other head officer, or by the vice-president, manager, treasurer or secretary, of the corporation, whether the same be a foreign or domestic corporation, and whether such president or other officer be, or be not, resident in the Province of Manitoba; and in case of a foreign corporation such affidavit may be made by any general or local manager, secretary or agent of the corporation in the Province. 63 and 64 V., c. 31, s. 30.

39. Growing crops, &c., not to be mortgaged.—Exception.—Every mortgage, bill of sale, lien, charge, incumbrance, conveyance, transfer or assignment, executed or created, and which is intended to operate and have effect as security, shall, in so far as the same assumes to bind, comprise, apply to or affect any growing crop, or crop to be grown in the future, in whole or in part, be absolutely void, except the same be made, executed or created as a security for the purchase price, and interest thereon, of seed grain. 63 and 64 V., c. 31, s. 31; 1 Ed. 7, c. 22, s. 2.

40. Seed grain mortgages to have priority.—Every mortgage or incumbrance upon growing crops, or crops to be grown, made, executed or created to secure the purchase price of seed grain,

with or without interest, shall not be affected by, or be subject to, any chattel mortgage or bill of sale previously given by the mortgagor, any landlord's claim for rent, in respect of the land upon which such seed grain has been used for sowing the crop during the year in which it is supplied, or any claim of a mortgagee of the said lands arising under any term or covenant or condition contained in any such mortgage upon said lands or by any writ of execution against the mortgagor, in the hands of a sheriff or County Court bailiff at the time of the registration of such seed grain mortgage; but such seed grain mortgage shall be a first and preferential security for the sum therein mentioned upon the crop covered by such seed grain mortgage against any and every other claim security or process to which it might otherwise be liable. 63 and 64 V., c. 31, s. 32, (as amended by 7-8 Edw. VII, c. 2, s. 1.)

41. And to be within this Act.—Every mortgage or incumbrance upon growing crops or crops to be grown, made or created to secure the purchase price of seed grain, shall be held to be within the provisions of this Act; and the affidavit of bona fides of the mortgagee or his agent shall contain an additional or further statement that the same is taken to secure the purchase price of seed grain. 63 and 64 V., c. 31, s. 33.

42. And a separate register to be kept for them.—Every County Court clerk shall keep a distinct and separate register or book, in which all seed grain mortgages registered shall be entered, and shall furnish any information with regard thereto on payment of a fee of twenty-five cents. 63 and 64 V., c. 31, s. 34.

43. Clerk to give certificate.—Every County Court clerk shall, upon payment of a fee of fifty cents, give a certificate setting forth the chattel mortgages registered in his office against any person or corporation, and shall be responsible for the correctness of the information contained in such certificate. 63 and 64 V., c. 31, s. 35.

CHATTEL PROPERTY OF RAILWAY COMPANIES.

44. Conveyance of chattel property of railway companies may be registered in office of Provincial Secretary instead of in County Court offices.—The provisions of this Act, as to filing and registration of bills of sale and chattel mortgages in the offices of Clerks of County Courts, shall not apply to mortgages by railway companies including cars, equipment, rolling stock or other chattel property of railway companies, but such mortgages may be filed and registered in the office of the Provincial Secretary of the Province of Manitoba, and on such filing and registration shall have priority from the date of such filing and shall remain in force, until the same have been discharged and satisfied, and without the necessity of renewal, or any affidavits of execution of bona fides, and discharges of such mortgages may be registered in such office. (Added by 3-4 Edw., VII., c. 2, s. 1.)

45. Affidavit of bona fides made by mortgage of chattels in trust for bondholder what shall be sufficient.—(1) In the case of a mortgage or conveyance of goods and chattels of any company incorporated by or under any Act or Charter of the Dominion of Canada, or incorporated or licensed by or under any Act or Charter of the Province of Manitoba, made to a bondholder or bondholders, or to a trustee or trustees, for the purpose of securing the bonds or debentures of such company, instead of the affidavit of

bona fides required by sections 3 and 5 of this Act, it shall be sufficient for the purposes of this Act if an affidavit be filed as thereby required, made by the mortgagee or one of the mortgagees, to the effect that the said mortgage or conveyance was executed in good faith and for the express purpose of securing the payment of the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagors, or of preventing the creditors of such mortgagors from obtaining payment of any claim against them.

(2.) **Extension of time for filing when mortgagor is a company whose head office is not in Manitoba.**—In the case of any such conveyance or mortgage made by an incorporated company, the head office whereof is not within the Province of Manitoba, such mortgage or conveyance may be filed within thirty days instead of twenty days, and the same shall be of the like force, effect and priority as if the same had been filed within such twenty days.

(3.) **Renewal of such mortgage.**—Any such mortgage may be renewed in the manner and with the effect provided by section 20 and subsequent sections of this Act, upon the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the said mortgage, and showing the amount of the bond or debenture debt which the same was made to secure, and showing all payments on account thereof which, to the best of the information and belief of the person making such statement, have been made, or of which he is aware or has been informed together with an affidavit of the person making such statement that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by said section 20 of this Act.

(4.) **Affidavits, &c., to be made when the mortgagee is an incorporated company.**—If any mortgage as aforesaid be made to an incorporated company the several affidavits and statements herein mentioned may be made by the president, vice-president, manager or assistant manager of such mortgagee company, or any other officer of the company authorized for such purpose.

(5.) **If certified copy of by-law authorising debentures is filed with the mortgage or conveyance no renewal necessary.**—Where such mortgage or conveyance is made as a security for debentures and the by-law authorizing the issue of the debentures, as a security for which the mortgage or conveyance was made, or a copy thereof, certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit of the secretary thereto attached or endorsed thereon, and having the corporate seal attached thereto, is registered with the mortgage or conveyance, it shall not be necessary to renew the said mortgage or conveyance, but the same shall in such case continue to be as valid as if the same had been duly renewed as in this Act provided.

(6.) **Application of preceding section.**—The preceding section shall apply to every such mortgage or conveyance made and registered after the first day of January, 1902, but nothing herein contained shall affect any accrued rights or any litigation pending on the day this Act shall come into force. Added by 3 and 4 Edw. VII., c. 2, s. 1.)

MANITOBA STATUTES 4-5 Edw. VII., c. 2, s. 1.

Conveyance of railway rolling stock, &c., may be registered in office of Provincial Secretary.—New renewal necessary.—Notwithstanding anything contained in "The Bills of Sale and Chattel Mortgage Act" and "The Lien Notes Act," and amendments thereto, any bill of sale, lease or other agreement of or respecting rolling stock and equipment, for use on railways, may be registered in the office of the Provincial Secretary of the Province of Manitoba, on payment of a fee of two dollars, by filing in such office a copy thereof, certified by a notary public to be a true copy, and no other registration or filing shall be necessary, and upon being so filed the same shall be as valid and effectual as if filed or registered in accordance with the provisions of the said Acts and amendments, and the same shall have priority from the time of such filing, and no renewal thereof shall be required, and any discharge or partial discharge of any such bill of sale, chattel mortgage, conditional sale or other agreement may be registered in the said office in the same manner on payment of a like fee.

R. S. M., 1902, CHAP. 99.

AN ACT RESPECTING LIEN NOTES.

SHORT TITLE s. 1.

MANUFACTURED GOODS ss. 2, 3.

Name to be stamped on, s. 2.

Manufacturer to furnish information, s. 3.

AS AFFECTING LANDS ss. 4-8.

Registration prohibited, s. 4.

Duty of registrar, s. 5.

Registration, if effected, void, s. 6.

Prohibited registration void, s. 7.

Notice to person claiming under registered instrument ineffectual, s. 8.

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. **Short title.**—This Act may be cited as "The Lien Notes Act." R.S.M., c. 87, s. 1.

MANUFACTURED GOODS.

2. **Manufactured goods to have name stamped, &c.**—On, from and after the twenty-seventh day of July in the year one thousand eight hundred and eighty-six, receipt notes, hire receipts and orders for chattels given by bailees of chattels, where the condition of the bailment is such that the possession of the chattels should pass without any ownership therein being acquired by the bailee, were and shall be only valid in the case of manufactured goods or chattels which, at the time the bailment is entered into, have the manufacturer's name or some other distinguishing name painted, printed or stamped thereon or otherwise plainly attached thereto; and no such bailment shall be valid unless it be evidenced in writing, signed by the person thus taking possession of the chattel. R.S.M., c. 87, s. 2.

3. Manufacturers to furnish information.—Every manufacturer and his agents shall forthwith, on application, furnish to any applicant full information respecting the balance due on any such manufactured goods or chattels and the terms of payment of such balance, and in case he or they refuses or refuse, neglects or neglect, to furnish the information asked for, such manufacturer or agent shall be liable to a fine of not less than ten dollars nor more than fifty dollars on conviction before any justice of the peace. R. S.M., c. 87, s. 3.

AS AFFECTING LANDS.

4. Registration of lien notes prohibited.—On and after the eleventh day of March in the year one thousand eight hundred and ninety-three, no lien notes, hire receipts, orders for chattels or documents or instruments containing as a portion thereof or having annexed thereto or indorsed thereon any order, contract or agreement for the purchase or delivery of any chattel or chattels, could lawfully be and none of the same shall hereafter be registered in any registry office or land titles office in the Province of Manitoba; and no caveat shall be registered or filed in any land titles office which has annexed thereto or indorsed thereon, or which refers to or is founded upon, any instrument or document, or part thereof, the registration of which is prohibited by this section; anything contained in any statute of the Province of Manitoba to the contrary notwithstanding. 56 V., c. 17, s. 1, *part*.

5. Registrars to refuse to register.—It shall be the duty of every registrar and district registrar to whom any such lien note, hire receipt, order for chattels, document, instrument or caveat, the registration or filing whereof is prohibited by this Act, is presented to refuse to receive the same. 56 V., c. 17, s. 2.

6. Registration, if effected to be void.—If, notwithstanding the foregoing provisions of this Act, by inadvertence, accident, mistake or the non-performance of duty on the part of a registrar or district registrar, any such lien note, hire receipt, order for chattels, document, instrument or caveat, the registration or filing whereof is prohibited by the fourth section of this Act, be registered or filed in any registry office or land titles office in the Province of Manitoba, such registration or filing shall, nevertheless, be absolutely null and void. 56 V., c. 17, s. 3.

7. Prohibited registration void since 11th March 1893.—It is hereby declared that every lien note, hire receipt, order for chattels, or document or instrument, the registration of which was or is prohibited by this Act or by any Act or Acts for which this Act is substituted, was and is since the eleventh day of March in the year one thousand eight hundred and ninety-three, and shall hereafter be, in so far as the same purported or purports to affect land, absolutely null and void as against any person or corporation claiming an interest or estate in lands under a registered instrument. 57 V., c. 14, s. 1.

8. Notice to person claiming under registered instrument not to prevent operation of preceding section.—No notice, past, present or future, actual or constructive, to the person or corporation claiming under such registered instrument shall avail to prevent the operation of the preceding section. Notice, whether actual or constructive, in such cases shall be void and of no effect whatever. 67 V., c. 14, s. 2.

ONTARIO

R. S. O., 1897, CHAP. 148.

AN ACT RESPECTING MORTGAGES AND SALES OF PERSONAL PROPERTY.

Short Title	s. 1.
Chattel Mortgages where possession of goods unchanged:	
Affidavits as to indebtedness	ss. 2, 3.
To be registered or void as against creditors	ss. 2, 5.
To operate from execution	s. 4.
Sales of goods where possession unchanged:	
To be registered or void as against creditors	s. 6.
Mortgages of goods to secure advances or sureties	ss. 7, 8.
Authority to be filed	s. 9.
Affidavit of Bona Fides may be made by one or two or more mortgagees, etc.,	s. 10.
Contracts to give mortgages or make sales	ss. 11-14.
Place of registration	ss. 15, 16.
When mortgaged goods removed to another County or Dis- trict	s. 17.
Renewal of mortgages	ss. 18-23.
Certificate of Clerk to be evidence of registration	s. 24.
Discharge of mortgages	ss. 25, 28.
Fees	s. 29.
Miscellaneous:	
Registration where time expires on a day on which of- fices are closed	s. 30.
Authority to take or renew mortgages may be general	s. 31.
Description in instrument	s. 32.
Affidavits	s. 33.
Act not to apply to vessels	s. 34.
Where new county formed	s. 35.
Inspection of books	s. 36.
Act to extend to goods not ready for delivery	s. 37.
"Creditor," meaning of,	s. 38.
"Actual and continued change of possession," meaning of,	s. 39.
Taking possession not to validate	s. 40.
Agreements where possession passes without ownership	s. 41.
Statistical returns	s. 42.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short Title.—This Act may be cited as “The Bills of Sale and Chattel Mortgage Act.” 57 V., c. 37, s. 1.

EFFECT OF REGISTERING OR OMITTING TO REGISTER.

2. Mortgages of goods not attended with change of possession to be registered.—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, in Ontario, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall, within five days from the execution thereof, except as hereinafter otherwise provided, be registered as hereinafter provided, together with the affidavit of an attesting witness thereto, of the due execution of such mortgage or conveyance, or of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, which affidavit shall also contain the date of the execution of the mortgage, and also with the affidavit of the mortgagee or of one of several mortgagees or of the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith and is properly authorized in writing to take such mortgage, in which case the affidavit of the agent shall state that he is aware of all the circumstances connected therewith, and a copy of such authority or the authority itself shall be registered therewith. 37 V., c. 37, s. 2.

3. Contents of affidavit of bona fides.—Such last mentioned affidavit, whether of the mortgagee or his agent, or one of several mortgagees or the agent of the mortgagee or mortgagees shall state in addition to what is required by section 2 of this Act that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage, that the mortgage was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him. 57 V., c. 37, s. 3.

4. When mortgage to take effect.—Every such mortgage or conveyance shall operate and take effect upon, from and after the day and time of the execution thereof. 57 V., c. 37, s. 4.

5. Effect of non-registration.—In case such mortgage or conveyance and affidavits are not registered as by this Act provided, the mortgage or conveyance shall be absolutely null and void as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith for valuable consideration. 57 V., c. 37, s. 5.

6. Sale of goods not attended with delivery to be registered.—Every sale of goods and chattels, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Act, and shall be accompanied by an affidavit of an attesting witness thereto of the due execution thereof, and an affidavit of the bargaineer, or his agent (if such agent is aware of all the circumstances connected therewith) duly authorized in writing to take the con-

veyance (a copy of which authority or the authority itself shall be attached to and filed with the conveyance) that the sale is *bona fide* and for good consideration, as set forth in the said conveyance, and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainor, and the conveyance and affidavits shall be registered, as by this act provided, within five days from the executing thereof, otherwise the sale shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. 57 V., c. 37, s. 6.

7. Mortgages to secure future advances to be registered.

—In case of an agreement in writing for future advances for the purpose of enabling the borrower to enter into and carry on business with such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case of a mortgage of goods and chattels for securing the mortgagee repayment of such advances, the time of repayment thereof not being longer than one year from the making of the agreement, and in case the mortgage is executed in good faith, and sets forth fully by recital or otherwise, the terms, nature and effect of the agreement, and in case the mortgage is accompanied by the affidavit of an attesting witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into and the mortgage taken by an agent duly authorized in writing to make such agreement and to take such mortgage and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into between the parties thereto and truly states the extent of the liability intended to be created by the agreement and covered by such mortgage, and that the mortgage is executed in good faith, and for the express purpose of securing the mortgagee repayment of his advances, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against the mortgagor, and in case the mortgage is registered as by this Act provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Act. 57 V., c. 37, s. 7.

8. Mortgages given to secure indorsers and sureties to be registered.—In case of a mortgage of goods and chattels for securing the mortgagee against the indorsement of any bills or promissory notes or any other liability by him incurred for the mortgagor, not extending for a longer period than one year from the date of such mortgage, and in case the mortgage is executed in good faith, and sets forth fully by recital or otherwise, the terms, nature and effect of the agreement, and the amount of liability intended to be created, and in case such mortgage is accompanied by the affidavit of an attesting witness thereto of the due execution thereof, and by the affidavit of the mortgagee, or in case the mortgage has been taken by an agent duly authorized in writing to take such mortgage and if the agent is aware of the circumstances connected therewith, then, if accompanied by the affidavit of such agent, such affidavit, whether of the mortgagee or his agent, stating that the mortgage truly states the extent of the liability intended to be created and covered by such mortgage, and that such mortgage, is executed in good faith and for the express purpose of securing the mortgagee

against the payment of the amount of his liability for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against such mortgagor, and in case such mortgage is registered as by this Act provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Act. 57 V., c. 37, s. 8.

9. Agents' authority to be attached to mortgage.—The authority in writing referred to in the two next preceding sections, or a copy of such authority shall be attached to and filed with the mortgage. 57 V., c. 37, s. 9.

10. Affidavits of bona fides.—The affidavit of bona fides required by this Act and the affidavit required upon the renewal of a chattel mortgage may be made by one of two or more bargainees or mortgagees and if a mortgage be made to a company the said affidavits may be made by the president, vice-president, manager, assistant manager, secretary, or treasurer of such company, or by any other officer or agent of such company duly authorized by resolution of the directors in that behalf. Any such affidavit made by an officer or agent shall state that the deponent is aware of the circumstances connected with the sale or mortgage, as the case may be, and has personal knowledge of the facts deposed to. (As amended by 3 Edw. VII, c. 7, s. 30.

(10a.) **Certain affidavits of bona fides validated.**—Notwithstanding anything in section 10 contained, any affidavit of bona fides filed on or before the 1st day of February, 1904, which though it fails to state that the deponent is aware of the circumstances connected with the sale or mortgage as the case may be and has personal knowledge of the facts deposed to, complies in all other respects with the provisions of this Act, shall be deemed to sufficiently comply with the said provisions; and the conveyance, chattel, mortgage or statement referred to in such affidavit shall be of the same force and effect as though all the said provisions had been complied with. (Added by 4 Edw. VII, c. 10, s. 35.

CONTRACTS TO GIVE MORTGAGES, ETC.

11. Contract to give a chattel mortgage to be deemed a mortgage.—Every covenant, promise or agreement entered into on or after the 7th day of April, 1896, to make, execute or give a mortgage or conveyance intended to operate as a mortgage of goods and chattels in whatever words the same may be expressed shall be deemed to be a mortgage or conveyance within the meaning of this Act, and unless accompanied by an immediate delivery and an actual and continued change of possession of the goods and chattels mortgaged, the same or a true copy thereof together with affidavits of execution and *bona fides* shall be registered within the time and in the manner hereby prescribed in respect of bills of sale and mortgages, otherwise such covenant, promise or agreement shall be absolutely null and void as against creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith for valuable consideration. 59 V., c. 34, s. 1. . .

12. Contract to make a sale to be deemed a sale.—Every covenant, promise or agreement to make a sale of goods and chattels, in whatever words the same may be expressed, shall be deemed to be a sale of goods and chattels within the meaning of this Act,

and unless accompanied by an immediate delivery and followed by an actual and continued change of possession of the said goods and chattels shall be in writing, and such writing accompanied by affidavits of execution and *bona fides* shall be registered within the time and in the manner prescribed as respects bills of sale by this Act, otherwise the said covenant, promise or agreement shall be absolutely void as against the creditors of the bargainor and as against subsequent purchasers or mortgagees in good faith. 59 V., c. 34, s. 2. 59 V., c. 34, s. 3.

13. Contracts made prior to 7th April, 1896.—In the case of covenants, promises or agreements made before the 7th day of April, 1896, the provisions of this Act with regard to registration may be deemed to be complied with if such registration was effected within three calendar months after the said date and subject thereto this Act shall extend and apply to every such covenant, promise and agreement made before as well as after the said date. 59 V. c. 34, s. 3.

14. Verbal agreements.—Every verbal agreement to the effect mentioned in the three next preceding sections and not reduced to writing shall be absolutely null and void to all intents and purposes whatever, as against creditors or subsequent purchasers or mortgagees mentioned in such sections. 59 V., c. 34, s. 4.

PLACE OF REGISTRATION.

15. Instruments to be registered in the county court office.—(1) The instruments mentioned in the preceding sections shall in counties be registered in the office of the Clerk of the County Court of the county or union of counties where the property so mortgaged or sold is at the time of the execution of such instrument; and every such Clerk shall file all such instruments presented to him for that purpose, and shall indorse thereon the time of receiving the same in his office. 57 V., c. 37, s. 11.

(2) **Registration in Algoma, Muskoka, Thunder Bay, Nipissing.**—Where the goods and chattels mortgaged or sold are situate within the Districts of Algoma, Muskoka, Thunder Bay or Nipissing, the said instruments shall be filed within ten days from the execution thereof in the office of the District Court Clerk in the district in which the goods are situate. (As amended by 62 V. (2), c. 11, s. 30.

(3) **Registration in Parry Sound and Rainy River.**—Where the goods or chattels mortgaged or sold are situate within the Districts of Parry Sound or Rainy River, the said instruments shall be filed within ten days from the execution thereof in the office of the Clerk of the First Division Court of the district in which the goods are situate. When and so soon as a vacancy shall hereafter occur in the office of the Clerk of the First Division Court in the said district of Parry Sound, the said instruments shall thereafter be filed within ten days from the execution thereof in the office of the District Court Clerk in the said district of Parry Sound. (As amended by 62 V., (2), c. 11, s. 31.

(4) **Registration in Haliburton.**—Where the goods and chattels mortgaged or sold are situate within the Provisional County of Haliburton, the said instruments shall be filed within seven days from the execution thereof in the office of the Clerk of the First Division Court of the said provisional county. 59 V., c. 32, s. 1.

(5) **Registration in Manitoulin.**—Where the goods and chattels mortgaged or sold are situate within the District of Manitoulin the said instruments shall be filed within ten days from the execution thereof in the office of the District Court Clerk for Manitoulin. (As amended by 62 V., c. 14, s. 13.)

(6) **Instruments filed with Deputy Clerk prior to 4th May, 1891.**—Any bill of sale or chattel mortgage filed with the said Deputy Clerk for Manitoulin prior to the 4th day of May, 1891, shall be as valid as if the same had been filed with the Clerk of the County Court.

(7) **Proceedings pending on 4th May, 1891, not affected.**—Nothing in the two next preceding subsections contained shall be construed to affect any action or other proceeding pending on the 4th day of May, 1891, in which the validity of any instrument required to be filed under chapter 125 of the Revised Statutes of Ontario, 1887, and amending Acts is called in question by reason of the place of filing such instrument. 57 V., c. 37, s. 28.

(8) **Meaning of "Clerk of the County Court."**—"Clerk of the County Court" or "Clerk" when used in this Act shall, unless where inconsistent with the context, include the officers mentioned in the section. 60 V., c. 3, s. 3.

16. Manner of registration.—The said Clerks respectively shall number every such instrument or copy filed in their offices, and shall enter in alphabetical order in books to be provided by them, the names of all the parties to such instruments, with the numbers indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. 57 V., c. 37, s. 12.

17. Procedure when mortgaged goods are removed.—In the event of the permanent removal of goods and chattels mortgaged as aforesaid from the county or union of counties or territorial district in which the goods and chattels were at the time of the execution of the mortgage, to another county or union of counties or territorial district, or to the said provisional county of Haliburton, or from the said provisional county to another county or union of counties or territorial district, before the payment and discharge of the mortgage, a certified copy of the mortgage, under the hand of the Clerk in whose office it was first registered, and under the seal of the Court, and of the affidavits and documents and instruments relating thereto filed in such office shall be filed with the Clerk of the County Court of the county or union of counties to which the goods and chattels are removed, or in the proper office as mentioned in section 15, in case such goods and chattels are removed to a territorial district or to the said provisional county, within two months from such removal, otherwise the said goods and chattels shall be liable to seizure and sale under execution, and in such case the mortgage shall be null and void as against creditors of the mortgagor and against subsequent purchasers and mortgagees in good faith for valuable consideration, as if never executed. 57 V., c. 37, s. 13; 60 V., c. 3, s. 3.

RENEWAL OF MORTGAGES.

18. Statement of amount due to be filed yearly.—Subject to the provisions hereinafter contained as to mortgages to companies, every mortgage, or copy thereof, filed in pursuance of this Act shall cease to be valid, as against the creditors of the persons making the same and against subsequent purchasers and mortgagees in good

faith for valuable consideration, after the expiration of one year from the day of the filing thereof, unless, within thirty days next preceding the expiration of the said term of one year, a statement exhibiting the interest of the mortgagee, his executors, administrators or other assigns in the property claimed by virtue thereof, and showing the amount still due for the principal and interest thereon, and shewing all payments made on account thereof, is filed in the office of the Clerk of the County Court of the county or union of counties wherein the goods and chattels are then situate, with an affidavit of the mortgagee, or one of several mortgagees, or of the assignee or one of several assignees or of the agent of the mortgagee or assignee, or mortgagees or assignees (as the case may be), duly authorized in writing, for that purpose (a copy of which authority or the authority itself shall be filed therewith), that the statement is true, and that the mortgage has not been kept on foot for any fraudulent purpose. 57 V., c. 37, s. 14.

19. Form of statement and affidavit.—Proviso.—The statement and affidavit mentioned in the next preceding section may be in the form given in the Schedule B to this Act, or to the like effect: Provided, that if any *bona fide* error or mistake shall be made in the said statement, either by the omission to give any credit or credits or by any miscalculation in the computation of interest or otherwise, the said statement and the mortgage therein referred to shall not be invalidated, provided that the mortgagee, his executors, administrators or other assigns shall, within two weeks after the discovery of any such error or mistake, file an amended statement and affidavit in the form given in Schedule B or to the like effect, and referring to the former statement and clearly pointing out the error or mistake therein and correcting the same; but if, prior to the filing of such amended statement and affidavit, any creditor or purchaser or mortgagee in good faith for valuable consideration shall have made any *bona fide* advance of money or given any valuable consideration to the mortgagor, or shall have incurred any costs in proceedings taken on the faith of the amount due on any mortgage being as stated in the renewal statement and affidavit filed, then the said mortgage as to the amount so advanced or the valuable consideration given or costs incurred as aforesaid by such creditor, purchaser or mortgagee, shall, as against such creditor, purchaser or mortgagee, stand good only for the amount mentioned in the renewal statement and affidavit first filed. 57 V., c. 37, s. 15.

20. Manner of filing and entering affidavit and statement.—The statement and affidavit shall be deemed one instrument, and be filed and entered in like manner as the instruments in this Act mentioned are, by section 16, required to be filed and entered, and the like fees shall be payable for filing and entering the same as are not payable for filing and entering such instruments. 57 V., c. 37, s. 16.

21. Statement to be filed annually.—Another statement in accordance with the provisions of section 18 of this Act, duly verified as required by that section, shall be filed in the office of the Clerk of the County Court of the county wherein the goods and chattels described in the mortgage are then situate, within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the said section 18, or such mortgage, or copy thereof, shall cease to be valid as against the creditors of the persons making the same, and as against purchasers and mortgagees in good faith for valuable consideration, and so on from year to year, that is to say, another statement as aforesaid,

duly verified, shall be filed within thirty days next preceding the expiration of one year from the day of the filing of the former statement, or such mortgage or copy thereof shall cease to be valid as aforesaid. 57 V., c. 37, s. 17.,

22. By whom affidavits or renewals may be made.—Proviso.—The affidavit required by section 18 may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any assignee claiming by or through any mortgagee, or any next of kin, executor or administrator of any such assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee, the assignment or the several assignments through which the assignee claims shall be filed in the proper office of the county in which the goods are, at or before the time of such refiling by the assignee, next of kin, executor or administrator of the assignee; Provided that an assignment for the benefit of creditors under chapter 147 of the Revised Statutes of Ontario, 1897, or any other Act of the Province of Ontario or the Dominion of Canada relating to assignments for the benefit of creditors or to insolvency or bankruptcy, need not be filed as aforesaid, provided such assignment be referred to in such statement, and notice thereof (when required) shall have been given in manner required by law. 57 V., c. 37, s. 18.

MORTGAGES TO SECURE BONDS, ETC., OF CORPORATIONS.

23.—(1) Affidavits of bona fides where mortgage given by company to secure bonds or debentures.—In the case of a mortgage or conveyance of goods and chattels of any incorporated company, made to a bondholder or bondholders, or to a trustee or trustees, for the purpose of securing the bonds or debentures of such company, instead of the affidavit of *bona fides* required by the sections 2 and 3 of this Act, it shall be sufficient for the purposes of this Act if an affidavit be filed as thereby required, made by the mortgagee or one of the mortgagees to the effect that the said mortgage or conveyance was executed in good faith and for the express purpose of securing the payment of the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagors, or of preventing the creditors of such mortgagors from obtaining payment of any claim against them. (As amended by 4 Edw. VII, c. 10, s. 36.

(2) Time for filing mortgage where head office of company not in Ontario.—In the case of any such conveyance or mortgage made by an incorporated company, the head office whereof is not within the Province of Ontario, such mortgage or conveyance may be filed within thirty days instead of five days, as provided in section 2 of this Act, and the same shall be of the like force, effect and priority as if the same had been filed within such five days.

(3) Renewal of mortgages.—Any such mortgage may be renewed in the manner and with the effect provided by section 18 and subsequent sections of this Act upon the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the said mortgage, and showing the amount of the bond or debenture debt which the same was made to secure, and showing all payments on account thereof which, to the best of the information and belief of the person making such statement, have been made, or of which he is aware or has been informed, together with an affidavit of the person making such statement, that the statement is true to the best

of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by said section 18 of this Act.

(4) **Affidavits and statements on behalf of companies.**— If any mortgage as aforesaid be made to an incorporated company, the several affidavits and statements herein mentioned may be made by the president, vice-president, manager or assistant manager of such mortgagee company, or any other officer of the company authorized for such purpose. 57 V., c. 37, s. 19.

(5) **Renewal of mortgages given to secure debentures of companies.**— Where such mortgage or conveyance is made as a security for debentures and the by-law authorizing the issue of the debentures, as a security for which the mortgage or conveyance was made, or a copy thereof, certified under the hand of the president or vice-president and secretary of the company and verified by an affidavit of the secretary thereto attached or endorsed thereon, and having the corporate seal attached thereto, is registered with the mortgage or conveyance, it shall not be necessary to renew the said mortgage or conveyance, but the same shall in such case continue to be as valid as if the same had been duly renewed as in this Act provided.

(6) The preceding subsection shall apply to every such mortgage or conveyance made and registered after the 5th day of May, 1894, but nothing herein contained shall affect any accrued rights or any litigation pending on the 13th day of April, 1897. 60 V., c. 14, s. 86.

The following subsections were added to section 23 by 3 Edw. VII, c. 7, s. 60.

(7) In the case of a mortgage securing bonds made by an incorporated company or rolling stock owned by it, it shall be sufficient for the purposes of this Act if this mortgage and affidavit in subsection 1 referred to, or copies thereof, be filed in the office of the Provincial Secretary, within the time limited by this Act for filing chattel mortgages.

(8) The offices of the Provincial Secretary shall be the place for filing the renewal statements of any such mortgage of rolling stock where renewal thereof is necessary under this Act.

(9) Subsections 7 and 8 shall apply to any such mortgage on rolling stock heretofore made, if the same has been filed as therein provided.

PROOF OF REGISTRATION.

24. The clerk's certificate to be evidence of registration.— A copy of any original instrument, or a copy thereof so filed as aforesaid, including any statement made in pursuance of this Act, certified by the Clerk in whose office the same has been filed under the seal of the Court, shall be received in evidence in all Courts, but only of the fact that the instruments or copy and statement were received and filed according to the indorsement of the Clerk thereon, and of no other fact; and in all cases the original endorsement by the Clerk, made in pursuance of this Act, upon any such instrument or copy, shall be received in evidence only of the fact stated in the endorsement. 57 V., c. 37, s. 20.

DISCHARGE OF MORTGAGES.

25. Certificates of discharge of chattel mortgages.—Where any mortgage of goods and chattels is registered under the provisions of this Act, such mortgage may be discharged by the filing, in the office in which the same is registered, of a certificate signed by the mortgagee, his executors or administrators, in the form given in the Schedule A hereto, or to the like effect. 57 V., c. 37, s. 21.

26. Entering certificates of discharge.—The officer with whom the chattel mortgage is filed, upon receiving such certificate, duly proved by the affidavit of a subscribing witness, shall, at each place where the number of the mortgage has been entered, with the name of any of the parties thereto, in the book kept by him under section 16 of this Act, or wherever otherwise in the said book the said mortgage has been entered, write the words "Discharged by Certificate Number (*stating the number of the certificate*)," and to the said entry the officer shall affix his name and he shall also indorse the fact of the discharge upon the instrument discharged, and shall affix his name to the indorsement. 57 V., c. 37, s. 22.

27. Entries of renewal.—Where a mortgage has been renewed under section 18 of this Act, the indorsement or entries required by the preceding section to be made need only be made upon the statement and affidavit filed on the last renewal, and the entries of the statement and affidavit in the said book. 57 V., c. 37, s. 23.

28. Entry signment of mortgages.—In case a registered chattel mortgage has been assigned, the assignment shall, upon proof by the affidavit of a subscribing witness, be numbered and entered in the alphabetical chattel mortgage book, in the same manner as a chattel mortgage, and the proceedings authorized by the next preceding three sections of this Act, may and shall be had, upon a certificate of the assignee, proved in manner aforesaid. 57 V., c. 37, s. 24.

FEES.

29. Fees.—For services under this Act the Clerks aforesaid shall be entitled to receive the following fees:

1. For filing each instrument and affidavit, and entering the same in a book, as aforesaid, fifty cents.

2. For filing an assignment of any instrument, and making all proper indorsements in connection therewith, twenty-five cents.

3. For filing a certificate of discharge of any instrument, and making all proper entries and indorsements connected therewith, twenty-five cents.

4. For a general search, twenty-five cents.

5. For production and inspection of any instrument filed under this Act, ten cents.

6. For copies of any document with certificate prepared, filed under this Act, ten cents for every hundred words.

7. For extracts, whether made by the person who made the search, or by the officer, ten cents for every hundred words. 57 V., c. 37, s. 29.

MISCELLANEOUS PROVISIONS.

30. Registration where time limited expires on a day on which office is closed.—Where, under any of the provisions of this

Act the time for registering or filing any mortgage, bill of sale, instrument, document, affidavit, or other paper expires on a Sunday or other day on which the office in which the registering or filing is to be made or done is closed, and by reason thereof the registering or filing shall, so far as regards the time of doing or making the same, be held to be duly done or made if done or made on the day on which the office shall next be open. 57 V., c. 37, s. 30.

31. General authority to take or renew mortgages.—

An authority for the purpose of taking or renewing a mortgage or conveyance under the provisions of this Act may be a general one to take and renew all or any mortgages or conveyances to the mortgagee or bargainee. 57 V., c. 37, s. 31.

32. Manner of describing property in mortgages., etc.—

All the instruments mentioned in this Act whether for the sale or mortgage of goods and chattels, shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. 57 V., c. 37, s. 32.

33. Who to administer the affidavits.—

All affidavits and affirmations required by this Act may be taken and administered by any Judge, Notary Public, or a Commissioner or other person in or out of the Province authorized to take affidavits in and for the High Court or by a Justice of the Peace; and the sum of twenty cents shall be payable for every oath thus administered. 57 V., c. 37, s. 33.

34. Act not to apply to mortgages of vessels registered.—

This Act shall not apply to mortgages of vessels registered under the provisions of any Act in that behalf. 57 V., c. 37, s. 34.

35. Mortgages where new county is constituted.—

All chattel mortgages relating to property within any township, city, town, or incorporated village, forming part of a new county, at the date the proclamation forming the new county takes effect, shall, until their renewal becomes necessary to maintain their force against creditors, subsequent purchasers or mortgagees in good faith, continue to be as valid and effectual in all respects as they would have been if the new county had not been formed, but in the event of a renewal of any such chattel mortgage after the date the proclamation takes effect, the renewal shall be filed in the proper office in that behalf in the new county as if the mortgage had originally been filed therein, together with a certified copy under the hand of the Clerk and seal of the County Court, and no chattel mortgage in force at the said date shall lose its priority by reason of its not being filed in the new county prior to its renewal. 57 V., c. 37, s. 35.

36. Inspection of books in County Court office.—

Every person shall have access to and be entitled to inspect the several books of the County Courts, containing records or entries of the chattel mortgages or bills of sale filed; and no person desiring such access or inspection shall be required, as a condition to his right thereto, to furnish the names of the parties in respect of whom such access or inspection is sought; and all Clerks of the County Courts of the Province, shall respectively, upon demand or request, produce for inspection, any chattel mortgage, or bill of sale, filed in their respective offices, or of which records or entries are, by law, required to be kept in such several books of the County Courts. 57 V., c. 37, s. 36.

37. Mortgage, etc. of goods not in possession of mortgagor.—

The provisions of this Act shall extend to mortgages and sales of goods and chattels, notwithstanding that such goods and chattels may not be the property of, or may not be in the possession,

custody or control of the mortgagor or bargainor or any one on his behalf at the time of the making of such mortgage or sale, and notwithstanding that such goods or chattels may be intended to be delivered at some future time, or that the same may not at the time of the making of said mortgage or sale be actually procured or provided, or fit or ready for delivery, and notwithstanding that some act may be required for the making or completing of such goods and chattels, or rendering the same fit for delivery. 57 V., c. 37, s. 37.

38. "Creditors," meaning of.—Rev. Stat. c. 147.—In the application of this Act the word "creditors" where it occurs, shall extend to creditors of the mortgagor or bargainor suing on behalf of themselves and other creditors, and to any assignee in insolvency of the mortgagor, and to an assignee for the general benefit of creditors, within the meaning of *The Act respecting Assignments and Preferences by Insolvent Persons*, as well as to creditors having executions against the goods and chattels of the mortgagor or bargainor in the hands of the Sheriff or other officer. 57 V., c. 37, s. 38; 60 V., c. 3, s. 3.

39. "Actual and continued change of possession," meaning of.—The "actual and continued change of possession" mentioned in this Act shall be taken to be such change of possession as is open, and reasonably sufficient to afford public notice thereof. 57 V., c. 37, s. 39.

40. Subsequent possession not to validate sale otherwise void.—A mortgage or sale declared by this Act to be void or which, under the provisions of section 18, has ceased to be valid, as against creditors and subsequent purchasers or mortgagees, shall not by the subsequent taking of possession of the things mortgaged or sold by or on behalf of the mortgagee or bargainee be thereby made valid as against persons who become creditors, or purchasers, or mortgagees before such taking of possession. 57 V., c. 37, s. 40; 60 V., c. 3, s. 3.

AGREEMENTS WHERE POSSESSION PASSES WITHOUT OWNERSHIP.

41. Agreement on sale that property is not to pass until payment void unless filed, etc.—(1) In case of an agreement for the sale or transfer of merchandise of any kind to a trader or other person for the purpose of resale by him in the course of business, the possession to pass to such trader or other person, but not the absolute ownership until certain payments are made or other considerations satisfied, any such provision as to ownership shall as against creditors, mortgagees or purchasers be void, and the sale or transfer shall be deemed to have been absolute, unless

(a) The agreement is in writing, signed by the parties to the agreement or their agents, and

(b) **Where to be filed in counties.**—Unless such writing or a duplicate or copy verified by oath is filed in the office of the County Court Clerk of the county or union of counties or in the proper office in a district in which the goods are situate at the time of making the agreement, and also in the office of the County Court Clerk of the county or union of counties or in the proper office in a district in which such trader or other person resides at the time of making the agreement, such filing to be within five days of the delivery of possession of any of the goods under the agreement. 57 V., c. 37, s. 41 (1); 58 V., c. 24, s. 2.

(2) **Where to be filed in territorial districts.**—In the territorial districts of Muskoka, Nipissing, Algoma, Thunder Bay and Rainy River the agreement shall be filed in the office of the Clerk of the Peace in the district and in the districts of Parry Sound and Manitoulin in the office of the registrar of deeds for the district; Provided that if a Clerk of the Peace shall be appointed for the district of Parry Sound or the district of Manitoulin then any agreement requiring thereafter to be filed in such district shall be filed in the office of such Clerk of the Peace.

(3) **Agreement not to affect ordinary purchases.**—Such an agreement, though signed and filed, shall not affect purchases from the trader or person aforesaid in the usual course of his business.

(4) **Sections 37-41 not to affect sales of certain marked goods.**—*Rev. Stat. c. 149.*—The provisions of this and the four next preceding sections of this Act shall not affect the case of manufactured goods and chattels which at the time possession is given have the name and address of the manufacturer, bailor or vendor of the same painted, printed, stamped or engraved thereon or otherwise plainly attached thereto, nor any goods or chattels where the receipt-note, hire receipt, order or other instrument is filed and for which cases respectively provision is made by *The Act respecting Conditional Sales of Chattels*. 57 V., c. 37, s. 41 (24).

STATISTICAL RETURNS.

42. Returns of chattel mortgages, etc., to be made by clerks.—(1) Every Clerk with whom instruments are required to be registered under the provisions of this Act, shall on or before the 15th day of January in each year, transmit to the Minister of Agriculture returns which shall set out:

(a) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in the office of such Clerk on the 1st day of January, in the year preceding that in which the return is made;

(b) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors registered in such office during the year following the said 1st day of January, and

(c) The number of chattel mortgages and renewals, the number of discharges, and the number of assignments for the benefit of creditors on record and undischarged in the said office on the 31st day of December in said year.

(2) The returns shall not include instruments which have lapsed by reason of non-renewal.

(3) The chattel mortgages and renewals and discharges, and assignments for the benefit of creditors in the said returns shall be classified according to the several occupations or callings of the vendors or mortgagors or assignors as stated in the instruments, and shall show the aggregate sums purporting to be secured thereby respectively.

(4) The returns shall, where practicable, distinguish mortgages to secure future indorsations or future advances from mortgages to secure an existing debt or a present advance. 53 V., c. 12, s. 7.

ONT. BILLS OF SALE ACT.

SCHEDULE A.

(Section 25.)

FORM OF DISCHARGE OF MORTGAGE.

To the Clerk of the Court of the of
 I, A B, of do certify that has satisfied all money
 due on, or to grow due on a certain chattel mortgage made by
 to , which mortgage bears date the day of A. D.
 , and was registered (or in case the mortgage has been renewed
 was re-registered), in the office of the Clerk of the Court of
 the of , on the day of A. D. , as
 No. (here mention the day and date of registration of each as-
 signment thereof, and the names of the parties, or mention that such mort-
 gage has not been assigned, as the fact may be); and that I am the person
 entitled by law to receive the money, and that such mortgage is
 therefore discharged.

Witness my hand, this day of A.D.
 Signature of witness, and state residence } , A. B.
 and occupation. }

57 V., c. 37, Sched. A.

SCHEDULE B.

(Section 19.)

Statement exhibiting the interest of C. D. in the property men-
 tioned in a Chattel Mortgage dated the day of 18 ,
 made between A. B., of of the one part, and C. D., of
 of the other part, and filed in the office of the Clerk of the Court
 of the of , on the day of 18 ,
 and of the amount due for principal and interest thereon, and of all
 payments made on account thereof.

The said C. D., is still the mortgagee of the said property, and
 has not assigned the said mortgage (or the said E. F. is the assignee
 of the said Mortgage by virtue of an assignment thereof from the
 said C. D. to him, dated the day of , 18 ,) (or as
 the case may be).

No payments have been made on account of the said Mortgage
 (or the following payments, and no other, have been made on ac-
 count of the said Mortgage:

1886, January 1, Cash received.....\$100 00)

The amount still due for principal and interest on the said Mortgage
 is the sum of \$ computed as follows: (here give the computa-
 tion).

County of I, of the
 To wit, of in the County
 of the Mortgagee named in the Chattel Mortgage mentioned
 in the foregoing (or annexed) statement (or assignee of the mort-
 gage named in the Chattel Mortgage mentioned in the foregoing (or
 annexed) statement (as the case may be), make oath and say:

1. That the foregoing (or annexed) statement is true.
2. That the Chattel Mortgage mentioned in the said statement
 has not been kept on foot for any fraudulent purpose.

Sworn before me at the
 of in the
 County of this
 day of 18

57 V., c. 37, Sched. B.

R. S. O. 1897, CHAP. 149.

AN ACT RESPECTING CONDITIONAL SALES OF CHATTELS.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Conditional sales of manufactured goods when to be valid.—Receipt notes, hire receipts and orders for chattels, given by bailees of chattels, where the condition of the bailment is such that the possession of the chattel passes without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money or some stipulated part thereof, shall only be valid as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration in the case of manufactured goods or chattels, which at the time possession is given to the bailee, have the name and address of the bailor or vendor of the same painted, printed, stamped or engraved thereon or otherwise plainly attached thereto, and no such bailment shall be valid as against such subsequent purchaser or mortgagee as aforesaid, unless it is evidenced in writing, signed by the bailee or his agent. 51 V., c. 19, s. 1. (As amended by 4 Edw. VII, c. 10, s. 37.)

2. Section 1 not to apply to certain household furniture.—Section 1 not to apply when copy of receipt filed with Clerk of County Court.—The preceding section shall not apply to household furniture, other than pianos, organs, or other musical instruments; nor shall it apply to any chattels mentioned in any such receipt note, hire receipt, order or other instrument where the manufacturer, bailor or vendor within ten days from the execution of the receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale given to secure the purchase money, or a part thereof, shall file with the Clerk of the County Court of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase, a copy of the said receipt note, hire receipt, order or other instrument evidencing the bailment or conditional sale. 51 V., c. 19, s. 6.

(2) Copy of contract of sale of rolling stock of companies to be filed with Provincial Secretary.—In cases of conditional sales or bailments by incorporated companies to railway companies, of rolling stock the said section shall not apply if the contract evidencing the conditional sale or bailment or a copy thereof is filed in the office of the Provincial Secretary within ten days from the execution thereof.

(3) Sub-section 2 to be retroactive.—The preceding sub-section shall apply to any such conditional sale or bailment of rolling stock heretofore made if the contract evidencing the same, or a copy thereof, has been filed as therein provided, (added by 3 Edw. VII., c. 13, s. 2.)

3. Filing of instruments in unorganized districts.—(1). When the bailee or conditional purchaser resides at the time of the bailment or conditional purchase in an unorganized district, all instruments may be filed with the Clerk of the Court with whom mortgages and sales of chattels are to be registered in such district, under the law at the time in force.

(2) This section shall apply to instruments filed with the said officer prior to the 7th day of April, 1890. 53 V., c. 36, ss. 1, 2.

4. Clerk to file copy of receipt note.—The Clerk of the Court, on receipt of such copy, shall duly file the same and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge ten cents for every such filing and five cents for every search in respect thereof. A clerical error which does not mislead, or an error in an immaterial or non-essential part of the said copy so filed, shall not invalidate the said filing or destroy the effect thereof. 51 V., c. 19, s. 7.

5. Copy of receipt note to be left with vendee.—The manufacturer, bailor or vendor shall leave a copy of the receipt note, hire receipt, order or other instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter. 51 V., c. 19, s. 8.

6. Statement of amount due to be given on request.—(1) Every manufacturer, bailor or vendor shall, in answer to an inquiry made by any proposed purchaser or other interested person, within five days furnish full information respecting the amount or balance due or unpaid on any such manufactured goods or chattels, and the terms of payment of such amount or balance, and in case of his refusal or neglect to furnish the information asked for, such manufacturer, bailor or vendor shall on conviction before a Stipendiary or Police Magistrate or two Justices of the Peace, be liable to a fine not exceeding \$50.

(2) Any person convicted under this Act shall have the right to appeal against such conviction to the Judge of the County Court without a jury. 51 V., c. 19, s. 2.

7. Address to be given by person requiring statement.—The person so inquiring shall, if such inquiry is by letter, give a name and post office address to which a reply may be sent, and it shall be sufficient if the information aforesaid be given by registered letter deposited in the post office within the said five days, addressed to the person inquiring at his proper post office address, or where a name and address is given as aforesaid, addressed to such person by the name and at the post office so given. 51 V., c. 19, s. 3.

8. Breach of condition.—In case any manufacturer, bailor or vendor of any chattels in respect of which there has been a conditional sale or promise of sale, or his successor in interest takes possession thereof for breach of condition, he shall retain the same for twenty days, and the bailee or his successor in interest may redeem the same within such period on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. 51 V., c. 19, s. 4.

9. Notice of sale.—Where the goods or chattels have been sold or bailed originally for a greater sum than \$30, and the same have been taken possession of, as in the preceding section mentioned, such goods or chattels shall not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. The notice may be personally served or may, in the absence of such bailee or his successor in interest, be left at his residence or last known place of abode in Ontario, or may be sent by registered letter, deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. The said five days or seven days may be part of the twenty days in section 8 mentioned. 51 V., c. 19, s. 5.

10. Chattels, affixed to realty to remain subject to lien.—

(1) Where any goods or chattels which have been sold on special conditions as in section 1 of this Act mentioned are affixed to any realty, such goods and chattels shall notwithstanding remain subject to such conditions as fully as they were before being so affixed, but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against the manufacturer, bailor or vendor of such goods or chattels, or any person claiming through or under them, to retain the said goods and chattels upon payment of the amount due and owing thereon.

(2) The provisions of this section are to be deemed retroactive and shall apply to past as well as to future transactions. 60 V., c. 3, s. 3; c. 14, s. 80. (As amended by 5 Edw. VII, c. 13, s. 14.)

The Amending Act 6 Edw. VII, c. 19 is as follows:

23. Rev. Stat. c. 119 amended.—The Act to amend The Act respecting Conditional Sales of Chattels is amended by adding thereto the following as section 2 (a):

(2a.) **Receipt notes for chattels other than manufactured goods to be filed in office of county court clerk to be valid as against subsequent purchasers.**—Receipt notes, hire receipts and orders for chattels given by bailees of chattels other than manufactured goods and chattels where the condition of the bailment is such that the possession of the chattel passes without any ownership therein being acquired by the bailee until the payment of the purchase or consideration money or some stipulated part thereof shall only be valid as against subsequent purchasers or mortgagees without notice in good faith for valuable consideration, provided that the bailor or vendor within ten days from the execution of the receipt note, hire receipt order or other instrument, evidencing the bailment or conditional sale given to secure the purchase money or a part thereof shall file with the clerk of the County Court of the County in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase a copy of the said receipt note, hire receipt or order or other instrument evidencing the bailment or conditional sale, and no such bailment shall be valid as against such subsequent purchaser or mortgagee as aforesaid unless it is evidenced in writing signed by the bailee or his agent.

24. Rev. Stat., c. 149, s. 6, sub-s. 1, amended.—Subsection 1 of section 6 of the said Act is amended by striking out the word "manufactured" in the fourth and fifth lines thereof.

25. Application of Act.—Section 8 of the said Act is amended by adding the words "and keeping" after the word "taking" in the eighth line of the said section.

26. Sections 23, 24 and 25 of this Act shall not effect or apply to any such receipt not, hire receipt, or order for chattels made or given prior to the 1st day of January, 1907.

NEW BRUNSWICK

R. S. N. B., 1903, CHAP. 142.

RESPECTING BILLS OF SALE.

1. Short title.—This Chapter may be cited as "*The Bills of Sale Act.*" 56 V., c. 5, s. 30, amended.

2. Mortgage of goods, or copy, to be filed within 30 days from execution.—Affidavit of witness.—Affidavit of mortgagee or agent.—Every mortgage or conveyance intended to operate as a mortgage of goods and chattels, which is not accompanied by an immediate delivery and an actual and continued change of possession of the things mortgaged, or a true copy thereof, shall within thirty days from the execution thereof, be filed as hereinafter provided, together with the affidavit of a witness thereto of the due execution of the mortgage or conveyance of which the copy filed purports to be a copy, and also with the affidavit of the mortgagee, or of one of several mortgagees, or of the agent of the mortgagee or mortgagees, if such agent is aware of all the circumstances connected therewith. 56 V., c. 5, s. 1.

3. Contents of affidavit of mortgagee.—Such last mentioned affidavit, whether of the mortgagee or his agent, shall state that the mortgagor therein named is justly and truly indebted to the mortgagee in the sum mentioned in the mortgage; that it was executed in good faith and for the express purpose of securing the payment of money justly due or accruing due, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claims against him. 56 V., c. 5, s. 2.

4. Mortgage to have effect from day of filing.—Every such mortgage or conveyance shall only operate and take effect upon, from and after the day and time of filing thereof. 56 V., c. 5, s. 3.

5. Effect of failure to file mortgage.—In case such mortgage or conveyance and affidavits are not filed as hereinbefore provided, the mortgage or conveyance shall be absolutely null and void, as against subsequent purchasers or mortgagees in good faith for valuable consideration, the assignee of the mortgagor under any law relating to insolvency or insolvent, absconding or absent debtors, or an assignee for the general benefit of the creditors of the mortgagor, or as against the execution creditors of the mortgagor, or any Sheriff, constable, or other person levying on or seizing the property comprised in such mortgage under process of law. 56 V., c. 5, s. 4.

6. Bill of sale; affidavit of witness, and of bargainee or agent.—Authority of agent.—Bill of sale to be filed within 30 days from execution.—Effect of failure to file bill of sale.—Every sale of goods and chattels not accompanied by an immediate delivery and followed by an actual and continued change of possession of the goods and chattels sold, shall be in writing, and such writing shall be a conveyance under the provisions of this Chapter, and shall be accompanied by an affidavit of a witness thereto of the due execution thereof, and an affidavit of the bargainee or his agent duly authorized in writing to take the conveyance, a copy of which authority shall be attached to the conveyance, that the sale is *bona*

fide and for good consideration as set forth in the said conveyance and not for the purpose of holding or enabling the bargainee to hold the goods mentioned therein against the creditors of the bargainer, and the conveyance and affidavit shall be filed as hereinafter provided within thirty days from the execution thereof, otherwise the sale shall be absolutely void as against subsequent purchasers or mortgagees in good faith, the assignee of the grantor under any law relating to insolvency or insolvent, absconding or absent debtors, or an assignee for the general benefit of the creditors of the maker, or as against the execution creditors of the maker, or any Sheriff, constable or other person levying on or seizing the property comprised in such bill of sale under process of law. 56 V., c. 5, s. 5.

7. Mortgage to secure future advances, or indorsement of bills, or other liability.—Recital of agreement in mortgage.—Affidavit of witness and of mortgagee.—Affidavit by agent of mortgagee.—Contents of affidavit by mortgagee or agent.—Effect of filing mortgage.—(1) In case of an agreement for future advances for the purpose of enabling the borrower to enter into or carry on business with such advances (the time of repayment thereof not being longer than three years from the date of the mortgage, and the time for the making of the whole advances not being longer than two years from such date); and in case of a mortgage of goods and chattels for securing the mortgagee the repayment of such advances, or in case of a mortgage of goods and chattels for securing the mortgagee against the indorsement on any bills or promissory notes, or any other liability by him or by any other person incurred or to be incurred for a mortgagor, not extending longer than three years from the date of the mortgage; and in case the mortgage is executed in good faith, and sets forth by recital or otherwise the terms, nature and effect of the agreement, and amount of liability created or intended to be created, and in case the mortgage is accompanied by the affidavit of a witness thereto, of the due execution hereof, and by the affidavit of the mortgagee, or in case the agreement has been entered into, and the mortgage taken by an agent duly authorized in writing to make such agreement, and to take such mortgage, and if the agent is aware of the circumstances connected therewith, then if accompanied by the affidavit of such agent, such affidavit whether of the mortgagee or his agent, stating that the mortgage truly sets forth the agreement entered into by the parties thereto, and truly states the extent of the liability created or intended to be created by the agreement and covered by such mortgage, and that the mortgage is executed in good faith and for the express purpose of securing the mortgagee repayment of such advances, or to secure the liability created, or intended to be created for the mortgagor, as the case may be, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the mortgagor, nor to prevent such creditors from recovering any claims which they may have against the mortgagor, and in case the mortgage is filed as hereinbefore provided, the same shall be as valid and binding as mortgages mentioned in the preceding sections of this Chapter. 61 V., c. 32, s. 1 (1); 1 Edw. VII, c. 29.

(2) **Effect of failure to execute and file mortgage in accordance with section.—**Every mortgage of goods and chattels to secure repayment of future advances, or to secure any person against the indorsement of any bills or promissory notes, or any other liability incurred or to be incurred for the mortgagor, or for any other person shall be null and void as against the persons mentioned in

section 5, unless executed in accordance with the provisions of this section, and filed as hereinbefore provided. 61 V., c. 32, s. 1 (2).

8. Affidavit by one of two or more bargainees.—The affidavit of *bona fides* required by the preceding two sections, may be made by one of two or more bargainees or mortgagees. 56 V., c. 5, s. 7.

9. Where instruments to be filed.—Indorsement by registrar of time instrument received.—The instruments mentioned in the preceding sections shall be filed with the registrar of deeds of the county where the maker resides, if resident within the Province, and, if not so resident, then with the registrar or registrars of the county, or several counties in which the goods may be, and such registrar shall file all such instruments presented to him for that purpose, and shall indorse thereon the day, hour and minute of receiving the same in his office, and the same shall be kept there for the inspection of all persons interested therein, or intending or desiring to acquire any interest in or of any portion of the property covered thereby. 56 V., c. 5, s. 8, am.

10. Numbering of and index to instruments.—The registrar shall number every such instrument or copy filed in his office, and he shall enter in alphabetical order in a book to be kept by him for that purpose the names of all the parties to such instruments, with the numbers indorsed thereon opposite to each name, and such entry shall be repeated alphabetically under the name of every party thereto. 56 V., c. 5, s. 9.

11. Filing of statement, etc., in renewal of mortgage.—Notice to mortgagee by creditor of mortgagor to file statement, etc.—Effect of failure to file renewal statement, etc., after notice.—Every mortgage or copy thereof, filed in pursuance of this Chapter shall, before the expiration of one year from the filing thereof, be renewed by filing in the office of the registrar in which such instrument was originally filed, a statement exhibiting the interest of the mortgagee, his executors, administrators or assigns in the property claimed by virtue thereof, and showing the amount still due for principal and interest thereon, and showing all payments made on account thereof, or if the mortgage has been given under the provisions of section 7, the amount of advances made, as well as the amount remaining to be made, likewise the amount still due for principal and interest on such advances, and showing all payments made on account thereof, or showing the amount of liability incurred, and the amount due in respect thereof, and also all payments made on account thereof, as the case may be, together with an affidavit of the mortgagee, or of one of several mortgagees, or of the assignee, or of one of several assignees, or of the agent of the mortgagee or assignee, or mortgagees or assignees, as the case may be, that the statement is true, and that the mortgage has not been kept on foot for any fraudulent purpose, and in case of failure to file such statement and affidavit within the time aforesaid any creditor of the mortgagor may by a written notice served upon such mortgagee or mortgagees, or upon such assignee or assignees, require him or them to file such statement and affidavit, and if the same are not filed as required by this section within thirty days after service of such notice, then such mortgage shall cease to be valid as against any execution against the goods and chattels of the mortgagor issued at the suit of such creditor. 61 V., c. 32, s. 2.

12. Form of renewal statement.—The statement and affidavit mentioned in the next preceding section may be in the form

given in Form (B), or to the like effect. 56 V., c. 5, s. 11, a.m.; 61 V., c. 32, s. 3 (1).

13. Filing of renewal statement, etc.—The statement and affidavit shall be deemed one instrument and be filed and entered in like manner as the instruments in this Chapter mentioned are by section 9 required to be filed and entered, and the like fees shall be payable for filing and entering the same as are payable for filing and entering such instruments. 56 V., c. 5, s. 12.

14. Subsequent renewal statements.—Effect of failure to file same after notice by creditor.—Another statement in accordance with the provisions of section 11, duly verified as required by that section, shall be filed in the office of the registrar in which the original instruments were filed, within thirty days next preceding the expiration of the term of one year from the day of the filing of the statement required by the said section 11, and so on from year to year; that is to say, another statement as aforesaid, duly verified, shall be filed within thirty days next preceding the expiration of one year from the day of the filing of a former statement. In case of failure to file the statement and affidavit from time to time, as required by this section, any creditor of the mortgagor may, by a written notice served upon such mortgagee or mortgagees, assignee or assignees, require him or them to file such statement and affidavit, and if the same are not filed, as required by this section, within thirty days after service of the notice herein provided for, then such mortgage shall cease to be valid as against any execution against the goods and chattels of the mortgagor issued at the suit of such creditor. 56 V., c. 5, s. 13.

15. By whom affidavit under s. 11 may be made.—The affidavit required by section 11 may be made by any next of kin, executor or administrator of any deceased mortgagee, or by any assignee claiming by or through any mortgagee, or any next of kin, executor or administrator of any such assignee; but if the affidavit is made by any assignee, next of kin, executor or administrator of any such assignee, the assignment, or the several assignments through which the assignee claims, shall be filed in the office in which the mortgage is filed, at or before the time of such refiling by the assignee, next of kin, executor or administrator of the assignee. 56 V., c. 5, s. 14.

16. Affidavit with mortgage by company to secure debentures.—(1) In the case of a mortgage or conveyance of personal property of any company incorporated by or under Imperial Act or charter, or by or under any Act or charter of the Dominion of Canada, or by or under any Act or charter of the Province of New Brunswick, made to a bondholder or bondholders, or to a trustee or trustees, for the purpose of securing the bonds or debentures of such company, instead of the affidavit of *bona fides* required by section 2 and 3 of this Chapter, it shall be sufficient for the purposes of this Chapter if an affidavit be filed as thereby required, made by the mortgagee or one of the mortgagees, to the effect that the said mortgage or conveyance was executed in good faith, and for the express purpose of securing the payment of the bonds or debentures referred to therein, and not for the purpose of protecting the goods and chattels mentioned therein against the creditors of the mortgagor, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him.

(2) **Renewal of mortgage by company to secure debentures.**—Any such mortgage may be renewed in the manner and with

the effect provided by section 11 and following sections of this Chapter, upon the filing of a statement by the mortgagee or one of the mortgagees exhibiting the interest of the mortgagee or mortgagees in the property claimed by virtue of the said mortgage, and showing the amount of the bond or debenture debt that the same was made to secure, and showing all payments on account thereof which to the best of the information and belief of the person making such statement have been made, or of which he is aware or has been informed, together with an affidavit of the person making such statement that the statement is true to the best of his knowledge, information and belief, and that the mortgage has not been kept on foot for any fraudulent purpose, and such statement shall be filed instead of the statement required by the said section of this Chapter.

(3) **By whom affidavit to be made where mortgage under section to company.**—If any mortgage as aforesaid be made to an incorporated company, the several affidavits and statements herein mentioned may be made by the president, vice-president, manager or assistant manager of such mortgagee company, or any other officer of the company aforesaid for such purpose.

(4) **Where mortgage of company to be filed.**—For the purpose of the filing or registering of any conveyance under this Chapter, the head office within the Province of any incorporated company shall be deemed the domicile or place of residence of the company. 56 V., c. 5, s. 15.

17. Proof of filing of instrument by copy certified by registrar of deeds.—A copy of such original instrument or of a copy thereof so filed as aforesaid, including any statement made in pursuance of this Chapter, certified by the registrar in whose office the same has been filed, shall be received in evidence in all Courts, but only of the fact that the instrument or copy and statement were received and filed according to the indorsement of the registrar thereon, and of no other fact, and in all cases the original indorsement by the registrar made in pursuance of this Chapter upon any such instrument or copy shall be received in evidence only of the fact stated in the indorsement. 56 V., c. 5, s. 16.

18. Certificate of discharge of mortgage.—When any mortgage of goods and chattels is registered under the provisions of this Chapter, such mortgage may be discharged by the filing in the office of the registrar in which the same is filed, of a certificate signed by the mortgagee, his executors or administrators in Form (A), or to the like effect. 56 V., c. 5, s. 17.

19. Entry of discharge by registrar of deeds.—(1) The registrar with whom the chattel mortgage is filed, upon receiving such certificate, duly proved by the affidavit of a subscribing witness, shall, at each place where the number of the mortgage has been entered, with the name of any of the parties thereto in the book kept under section 10 of this Chapter, or wherever otherwise in the said book the said mortgage has been entered, write the words "Discharged by certificate number (*state the number of the certificate*)," and to the said entry, the said registrar shall affix his name, and he shall also indorse the fact of the discharge upon the instrument discharged, and shall affix his name to the indorsement.

(2) **Memorandum of discharge signed before registrar.**—Instead of the certificate above provided for, the mortgagee or assignee of the mortgagee may appear before the registrar with whom the mortgage is filed, and sign a memorandum of discharge in his

presence, either on the mortgage or the copy filed, and such registrar shall subscribe the same as a witness; and the registrar shall thereupon enter the discharge of such mortgage as provided in the preceding sub-section. 56 V., c. 5, s. 18.

20. Entries by registrar on renewal of mortgage.—Where a mortgage has been renewed under section 11 of this Chapter, the indorsements or entries required by the preceding section to be made, need only be made upon the statement and affidavit filed on the last renewal, and at the entries of the statement and affidavit in the said book. 56 V., c. 5, s. 19.

21. Numbering and indexing of assignment of mortgage, etc.—In case a registered chattel mortgage has been assigned, the assignment may, upon proof by affidavit of a subscribing witness, be numbered and entered in the alphabetical chattel mortgage book in the same manner as a chattel mortgage, and the proceedings authorized by the next preceding three sections of this Chapter may and shall be had upon a certificate of the assignee proved in manner aforesaid. 56 V., c. 5, s. 20.

22. Defeasance to bill of sale.—In case any bill of sale is subject to any defeasance the same shall be considered as part thereof, and such defeasance, or a copy thereof, shall be filed with the bill of sale or copy, otherwise such bill of sale shall be null and void as against the same persons, and as regards the same property and effects as if such bill of sale, or copy thereof, had not been filed according to the provisions of this Chapter. 56 V., c. 5, s. 21.

23. Fees of registrar.—For services under this Chapter the registrar shall be entitled to receive the fees provided by Chapter 188 of these Consolidated Statutes.

24. Filing of instrument on day following where time expires on Sunday or holiday.—Where under any of the provisions of this Chapter the time for registering or filing any mortgage, bill of sale, instrument, document, affidavit, or other paper expires on a Sunday or public holiday, on which the office of the registrar in which the filing is to be done is closed, and by reason thereof the filing cannot be done on that day, the filing shall, so far as regards the time of doing the same, be regarded to be duly done, if done on the next day on which the office shall be open. 56 V., c. 5, s. 23.

25. General authority to take or renew mortgages.—An authority for the purpose of taking or renewing a mortgage or conveyance under the provisions of this Chapter may be a general one, to take or renew all or any mortgages or conveyances to the mortgagee or bargainee. 56 V., c. 5, s. 24.

26. Description of chattels.—All the instruments mentioned in this Chapter, whether for the sale or mortgage of goods and chattels, shall contain such sufficient description thereof that the same may be thereby readily and easily known and distinguished. 56 V., c. 5, s. 25.

27. Before whom affidavits may be taken.—Fee on oath.—All affidavits and affirmations required by this Chapter shall be taken and administered by any Judge, notary public commissioner, or other person in or out of the Province authorized to take affidavits to be read in the Supreme Court, or by the registrar of deeds or a justice of the peace, and the sum of twenty cents shall be paid for any oath thus administered. 56 V., c. 5, s. 26.

28. Certain instruments and transactions excepted from Chapter.—“Goods and chattels.”—This Chapter does not apply to

bills of sale, or mortgages of vessels registered under the provisions of any Act in that behalf, nor to transfers of goods in the ordinary course of business of any trade or calling, sales of goods in foreign ports, or at sea, bills of lading, warehouse keepers' certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business, as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such documents to transfer or receive goods thereby represented, or assignments of personal property to creditors under proceedings for the relief of insolvent debtors, nor any transaction, agreement or contract, made or entered into by any bank under section 74 of *The Bank Act* of the Parliament of Canada. The expression "goods and chattels" in this Chapter shall mean goods, furniture, fixtures and other articles capable of complete transfer by delivery, and shall not include chattel interests in real estate, nor shares nor interests in the stock, funds or securities of any government or municipal corporation, or in the capital stock or debentures of any incorporated or joint stock company, or choses in action. 56 V., c. 5, s. 27, *am.*

29. Renewal of mortgage filed before passing of Chapter.—

Every chattel mortgage and every conveyance intended to operate as a mortgage of goods and chattels, filed before the passing of this Chapter and which has not been accompanied by delivery and an actual and continued change of possession of the things mortgaged, shall be renewed in the manner provided by sections 11 and 12, within twelve months from the passing of this Chapter; and so on from year to year thereafter as provided by section 14, otherwise the same may cease to be valid in the manner specified in sections 11 and 14 respectively, as against a creditor of the mortgagor serving the notices provided for by the said sections. 56 V., c. 5, s. 28 (1). ETAOIN

30. Forms of affidavits.—The forms of affidavits contained in Schedule (C) to this Chapter, or forms to the like effect, may be used in the cases to which they are applicable under this Chapter. 61 V., c. 32, s. 4.

FORM (A).

(Section 18).

FORM OF DISCHARGE OF MORTGAGE.

To the Registrar of Deeds of the County of
 I, A.B., of , do certify that has satisfied all
 money due on, or to grow due on a certain chattel mortgage
 made by to , which mortgage bears date the
 day of , A.D. 19 , and was filed (or in case
the mortgage has been renewed, was renewed) in the office of the Reg-
 istrar of Deeds of the County of on the
 day of , A.D. 19 , as No. (here mention the
day and date of registration of each assignment thereof, and the names
of the parties or mention that such mortgage has not been assigned, as the
fact may be), and that I am the person entitled by law to receive the
 money, and that such mortgage is therefore discharged.

Witness my hand this day of , A.D. 19

(Signature)

{
 Witness:
 (stating residence and occupation.) }

FORM (B).

(Section 12.)

STATEMENT WITH RESPECT TO BILL OF SALE BY
MORTGAGEE.

Statement exhibiting interest of C.D. (or E.F.) in the property mentioned in a chattel mortgage, dated the _____ day of _____, A.D. 19____, made between A.B. of _____, of the one part, and C.D. of _____, of the other part, and filed in the office of the Registrar of Deeds of the County of _____ on the _____ day of _____, A.D. 19____, and of the amount due for principal and interest thereon, and of all payments made on account thereof; (or, if the mortgage has been given under the provisions of section 7), the amount of advances made, as well as the amount remaining to be made; likewise the amount still due for principal and interest on such advances, and showing all payments made on account thereof, or showing the amount of liability incurred, and the amount due in respect thereof, and also all payments made on account thereof.

The said C.D. is still the mortgagee of the said property, or, the said E.F. is the assignee of the said mortgage by virtue of an assignment thereof from the said C.D. to him, dated the _____ day of _____, A.D. 19____ (or as the case may be).

No payments have been made on account of the said mortgage (or the following payments and no other have been made on account of the said mortgage):

1903.

January 1, Cash received.....\$100 00
or, The amount of advances made under said mortgage is as follows:
1903.

January 1. Cash,.....\$500 00

February 1. Cash,.....300 00

Amount of advances remaining to be paid 1,000 00

or, The amount of liability incurred for which said mortgage was given as security is as follows:

Payments have been made on account thereof as follows:

(Here set out the payments).

and the amount due in respect thereof is \$

(Here set out amount).

The amount still due for principal and interest on the said mortgage is the sum of \$ _____, computed as follows:

Here give the computation.

County of _____, to wit:

I, _____ of _____, in the County of _____, the mortgagee named in the chattel mortgage mentioned in the foregoing or annexed statement (or assignee of the mortgagee named in the chattel mortgage mentioned in the foregoing (or annexed) statement (as the case may be) (or I, _____ of,

due, or accruing due, as aforesaid and not for the purpose of protecting the goods and chattels mentioned in the said bill of sale by way of mortgage against the creditors of the said A.B., the mortgagor therein named, or of preventing the creditors of such mortgagor from obtaining payment of any claim against him, the said A.B.

Sworn before me at the
of in the County of ,
this day of (Signature)
, A.D. 19 }

(Signature)

Commissioner, etc.

61 V., c. 32.—Schedule (C) a.m.

AFFIDAVIT OF BONA FIDES BY AGENT OF MORTGAGEE.

(Section 3.)

New Brunswick, }
County of }
To-wit: }

I, E.F., of the of , in the County of
make oath and say:

1. I am the duly authorized agent of C.D., the mortgagee in the foregoing bill of sale by way of mortgage named, for the purposes of the said bill of sale by way of mortgage, and I am aware of all the circumstances connected therewith.

2. That A.B., the mortgagor in the said bill of sale named, is justly and truly indebted to C.D., the mortgagee therein named, in the sum of dollars mentioned therein.

3. That the said bill of sale was executed in good faith, and for the express purpose of securing the payment of the money so justly due, or accruing due as aforesaid, and not for the purpose of protecting the goods and chattels mentioned in the said bill of sale against the creditors of the said A.B., the mortgagor therein named, or of preventing the creditors of such mortgagor from obtaining payment of any claims against him, the said A.B.

Sworn before me at the
of in the County of ,
this day of (Signature)
, A.D. 19 }

(Signature)

Commissioner, etc.

61 V., c. 32.—Schedule (C).

AFFIDAVIT OF WITNESS TO EXECUTION OF BILL OF SALE.

(Section 6.)

New Brunswick, }
County of }
To-wit: }

I, of the of , in the County
of , make oath and say: That I was personally present
and did see the within bill of sale duly signed, sealed, and executed
by the parties thereto; and that I,
this deponent, am a subscribing witness to the same, and that the
name (signature of witness) set and subscribed as a witness to the

execution thereof, is of the proper handwriting of me, this deponent, and that the same was executed at the
of _____ in the County of _____.

Sworn before me at the _____ of _____ in the County of _____ }
this _____ day of _____ , (Signature)

, A.D. 19 _____

(Signature)

Commissioner. etc.

F

61 V., c. 32.—Schedule (C).

AFFIDAVIT OF BONA FIDES BY BARGAINEE.

(Section 6.)

New Brunswick, }
County of _____ }
To-wit: _____

I, _____, of the _____ of _____, in the _____ of _____, the bargainee in the foregoing bill of sale named, make oath and say:

That the sale therein made is *bona fide*, and for good consideration, namely: in consideration of the sum of _____ dollars (*or as the case may be*) as set forth in the said conveyance, and is not for the purpose of holding or enabling me, this deponent, to hold the goods mentioned therein against the creditors of the said bargainor.

Sworn before me at the _____ of _____ in the County of _____ }
this _____ day of _____ , (Signature)

, A.D. 19 _____

(Signature)

Commissioner. etc.

61 V., c. 32.—Schedule (C).

AFFIDAVIT OF BONA FIDES BY AGENT OF BARGAINEE.

(Section 6.)

New Brunswick, }
County of _____ }
To-wit: _____

I, _____, of the _____ of _____, in the County of _____, make oath and say:

1. I am the duly authorized agent of the bargainee in the foregoing bill of sale, named for the purposes for the said bill of sale, and I am aware of all the circumstances connected therewith.

2. I am duly authorized in writing to take such said conveyance or bill of sale, and a true copy of such authority is attached to such conveyance or bill of sale, and is marked with the letter A.

3. That the sale made therein is *bona fide*, and for good consideration, namely: in consideration of the sum of _____ dollars (*or as the case may be*), as set forth in the said conveyance; and is not for the purpose of holding or enabling the said bargainee to hold the goods mentioned therein against the creditors of the said bargainor.

Sworn before me at the }
 of in the County of }
 this day of }
 , A.D. 19 } (Signature)
 (Signature)
 Commissioner, etc.

61 V., c. 32.—Schedule (C).

AFFIDAVIT OF BONA FIDES TO CHATTEL MORTGAGE TO SECURE ADVANCES.

(Section 7.)

New Brunswick, }
 County of }
 To-wit: }
 I, C.D., of the of , in the of
 , the mortgagee in the foregoing bill of sale by
 way of mortgage named make oath and say: That the foregoing
 mortgage truly sets forth the agreement entered into between myself
 and A.B., therein named, and truly states the extent of the liability
 intended to be created by such agreement, and covered by the fore-
 going mortgage;

That the foregoing mortgage is executed in good faith, and for
 the express purpose of securing me, the said mortgagee, the repay-
 ment of the said advances which I have agreed to make as in said
 mortgage set out;

That the foregoing mortgage is not executed for the purpose of
 securing the goods and chattels mentioned in the said bill of sale
 by way of mortgage against the creditors of the said A.B., nor to
 prevent such creditors from recovering any claim which they may
 have against the said A.B.

Sworn before me at the }
 of in the County of }
 this day of } (Signature)
 , A.D. 19 }
 (Signature)
 Commissioner, etc.

61 V., c. 32.—Schedule (C).

AFFIDAVIT OF BONA FIDES TO CHATTEL MORTGAGE TO SECURE AGAINST INDORSEMENT OF A NOTE, ETC.

(Section 7.)

New Brunswick, }
 County of }
 To-wit: }
 I, C.D., of the of , in the County of ,
 the mortgagee in the bill of sale by way of mortgage named, make
 oath and say: That the foregoing mortgage truly sets forth the
 agreement entered into between me C.D., and the said mortgagor
 therein named, and truly states the extent of the liability intended
 to be created by such agreement and covered by such mortgage, and
 that the same was executed in good faith, and for the express pur-
 pose of securing me the said mortgagee therein named, against my

indorsement of the promissory note mentioned in said mortgage for dollars, or any renewals of the said recited promissory note as therein set out, and against the payment of the amount of such liability as therein set out, and not for the purpose of securing the goods and chattels mentioned therein against the creditors of the said mortgagor, nor to prevent such creditors from recovering any claims which they may have against such said mortgagor.

Sworn before me at the
of in the County of }
the day of } (Signature)
, A.D. 19

Commissioner, etc.

61 V., c. 32.—Schedule (C).

R. S. N. B., 1903, Chap. 143.

RESPECTING CONDITIONAL SALES OF CHATTELS.

1. Conditional sale of chattel to be in writing and copy filed.—Where in any sale of any chattel the condition of the sale is such that the possession of the chattel passes without any ownership therein being acquired by the vendee until the payment of the purchase or consideration money or some stipulated part thereof, such condition shall be valid only as against a subsequent purchaser or mortgagee from the vendee without notice, in good faith, and for valuable consideration, when the said sale is evidenced in writing signed by the bailee or his agent and a copy of such writing filed as provided by section 2 of this Chapter. 2 Edw. VII., c. 37, s. 1.

2. Copy to be filed within 15 days in registry office of county where vendee resides.—A copy of such writing shall be filed with the registrar of deeds of the county in which the bailee or conditional purchaser resided at the time of the bailment or conditional purchase, within fifteen days from the delivery of possession of the chattel mentioned in the agreement. 2 Edw. VII., c. 37, s. 2, *am.*

3. Filing and indexing by registrar.—Error in copy.—The registrar, on receipt of such copy, shall duly file the same, and cause it to be properly entered in an index book to be kept for that purpose, and shall be entitled to charge ten cents for every such filing, and five cents for every search in respect thereof. A clerical error which does not mislead, or an error in an immaterial or non-essential part of said copy so filed, shall not invalidate the said filing, or destroy the effect thereof. 62 V., c. 12, s. 3.

4. Vendee to be given copy of agreement.—The vendor shall leave a copy of the instrument by which a lien on the chattel is retained, or which provides for a conditional sale, with the bailee or conditional vendee at the time of the execution of the instrument, or within twenty days thereafter. 62 V., c. 12, s. 4; 2 Edw. VII., c. 37, s. 3.

5. When statement by vendor to be filed with registrar.—Every vendor shall, on demand by any creditor or interested person,

file with said registrar, within twenty days from the making of said demand, a sworn statement of the amount due on the instrument by which a lien on a chattel is retained, or which provides for a conditional sale, and on failure to so file said statement, shall forfeit all rights accruing under the instrument by which a lien on the chattel is retained, or which provides for a conditional sale, as against such creditor or interested person. 62 V., c. 12, s. 5; 2 Edw. VII., c. 37, s. 4.

6. Time for redemption of chattel where possession taken by vendor.—In case any manufacturer, bailor or vendor of any chattel in respect of which there has been a conditional sale or promise of sale, or his successor in interest takes possession thereof for breach of condition, he shall retain the same for twenty days, and the bailee, or his successor in interest, may redeem the same within such period, on payment of the full amount then in arrear, together with interest and the actual costs and expenses of taking possession which have been incurred. 62 V., c. 12, s. 6.

7. Notice of sale to vendee where possession taken by vendor.—Where goods or chattels have been sold or bailed originally for a greater sum than \$30, and the same have been taken possession of as in the preceding section mentioned, such goods or chattels shall not be sold without five days' notice of the intended sale being first given to the bailee or his successor in interest. The notice may be personally served, or may, in the absence of such bailee or his successor in interest, be left at his residence, or last known place of abode in New Brunswick, or may be sent by registered letter deposited in the post office at least seven days before the time when the said five days will elapse, addressed to the bailee or his successor in interest, at his last known post office address in Canada. The said five days or seven days, may be part of the twenty days in the last preceding section mentioned. 62 V., c. 12, s. 7.

8. Chattel affixed to freehold without written consent of vendor not to become part thereof.—Right to owner, etc., of realty to purchase chattel.—Where any goods or chattels have been sold or bailed under any receipt note, hire receipt, or other instrument by which it is agreed that no ownership therein shall be acquired by the purchaser or bailee until the payment of the purchase or consideration money, or some stipulated part thereof, and such goods or chattels are affixed to any realty, without the consent in writing of the owner of the goods or chattels, such goods and chattels shall not be or become part of the realty, but shall continue to be and remain personal property, and the rights of the owner or owners thereof shall not be in any way altered or affected by such goods or chattels being so affixed to the realty; but the owner of such realty, or any purchaser, or any mortgagee, or other incumbrancer on such realty, shall have the right as against the manufacturer, bailor, or vendor of such goods or chattels, or any person claiming through or under them, to retain the said goods and chattels upon payment of the amount due and owing thereon. 62 V., c. 12, s. 8 (1).

NOVA SCOTIA

R. S. N. S., 1900., Chap. 142.

OF THE PREVENTION OF FRAUDS ON CREDITORS BY
SECRET BILLS OF SALE.

SHORT TITLE.

1. Short title.—This Chapter may be cited as “The Bills of Sale Act.”

INTERPRETATION.

2. Interpretation.—In this Chapter, unless the context otherwise requires:

(a) The expression, “bill of sale” includes bills of sale, chattel mortgages, assignments, transfers, declarations of trust without transfer, and other assurances of personal chattels, and also powers of attorney, authorities or licenses to take possession of personal chattels as security for any debt; but does not include the following documents, that is to say: assignments for the general benefit of the creditors of the person making or giving the same, deeds of trust or mortgages made or given by any incorporated company for the purpose of securing its bonds or debentures, marriage settlements, transfers or assignments, of any ship or vessel or any share thereof, transfers of goods in the ordinary course of business of any trade or calling, bills of sale of goods in foreign parts or at sea, bills of lading, warehouse keepers’ certificates, warrants or orders for the delivery of goods, or any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing, or purporting to authorize, either by indorsement or by delivery, the possessors of such documents to transfer or receive goods thereby represented, or assignments of personal property to creditors under proceedings for the relief of indigent debtors.

(b) “**Personal chattels.**”—The expression “personal chattels” means goods, furniture, fixtures and other articles capable of complete transfer by delivery, and does not include chattel interests in real estate, nor shares or interests in the stock, funds or securities of any government, or municipal body, or in the capital or property of any incorporated or joint stock company, nor choses in action.

(c) “**Purchasers.**”—The expression “purchasers” means *bona fide* purchasers, and includes the assignee of the grantor under the Indigent Debtors’ Act, the official assignee, or an assignee for the general benefit of creditors.

(d) “**Creditors.**”—The expression “creditors” includes execution creditors, and sheriffs, constables and other persons levying on or seizing under process of law personal chattels comprised in a bill of sale.

(e) “**Filing.**”—The expression “filing” when applied to a bill of sale includes filing a copy of a bill of sale under the provisions of this Chapter. R.S., c. 92, s. 10 part; 1886, c. 32, s. 7; 1888, c. 23, s. 1; 1893, c. 39, s. 1.

FILING, AND AFFIDAVIT OF BONA FIDES.

3. Bill of sale or copy to be filed in registry for registration district in which grantor resides or if non-resident in which chattels are situate.—

(1) Every bill of sale of personal chattels made either absolutely or conditionally, or subject or not subject to any trust, and whereby the grantee has power either with or without notice on the execution thereof, or at any subsequent time, to take possession of any property and effects comprised in or made subject to such bill of sale; or

(ii) A true copy thereof,

shall be filed in the registry of deeds for the registration district in which the grantor, if a resident of Nova Scotia, resides at the time of the execution thereof, or if he is not a resident of Nova Scotia, then in the registry of deeds for the registration district in which the personal chattels are at the time of the execution of the bill of sale.

(2) Schedule to bill of sale to be deemed part thereof.—

Every schedule annexed to a bill of sale or referred to therein shall be deemed to be part thereof, and shall be filed with such bill of sale.

(3) Defeasance to bill of sale to be deemed part.—

If a bill of sale is subject to any defeasance the same shall be deemed to be part thereof, and such defeasance shall be filed with such bill of sale.

(4) When copy filed, copy of schedule or defeasance to be filed.—

If a copy of the bill of sale is filed, such copy shall include a copy of every such schedule and of every such defeasance, and shall be accompanied by an affidavit of the execution of the original bill of sale.

(5) Bills of sale, as against purchasers and creditors to have effect from time of filing.—

And every bill of sale shall, as against purchasers and creditors, only take effect and have priority from the time of filing such bill of sale. R.S., c. 92, ss. 1, 2; 1886, c. 32, s. 2.

4. Bill of sale given as security for advances, indorsements, or liability to contain a recital setting forth terms, &c., and be accompanied by an affidavit of truth of recital.—

(1). If the bill of sale is given to secure the grantee:

(a) repayment of any advances to be made by him under an agreement therefor; or

(b) against loss or damage by reason of the indorsement of any bills or promissory notes; or

(c) against loss or damage by reason of any other liability incurred by the grantee for the grantor; or

(d) against loss or damage by reason of any liability to be incurred under an agreement by the grantee for the grantor, such bill of sale shall set forth fully by recital or otherwise, and be accompanied by an affidavit of the grantor stating that it truly sets forth, the terms, nature and effect,

(a) of the agreement entered into between the parties in respect to the advances; or

(b) of such indorsements; or

(c) of such other liability incurred by the grantee for the grantor; or

(d) of such agreement in respect to the liability to be incurred by the grantee for the grantor; and

in all cases the amount of the liability created or by such agreement intended to be created and to be covered by such bill of sale.

(2) **Affidavit also to state "bona fides," &c., of execution of bill of sale, and that was not for the mere purpose of protecting chattels from creditors, &c.**—The affidavit accompanying such bill of sale shall also state that such bill of sale was executed in good faith and for the purpose of securing the grantee,

- (a) repayment of such advances; or
- (b) against loss or damage by reason of such endorsements; or
- (c) against loss or damage by reason of the liability incurred by the grantee for the grantor; or

(d) against loss or damage by reason of the liability to be incurred by the grantee for the grantor, under the agreement therefor, as the case may be, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against such grantor.

(3) **Form of affidavit.**—Such affidavit shall be as nearly as may be in the form "A" in the schedule.

(4) **Such bill of sale only to take effect, &c., from time of filing affidavit.**—And every bill of sale in this section mentioned shall, as against purchasers and creditors, only take effect and have priority from the time of the filing of such bill of sale accompanied by such affidavit. R.S., c. 92, ss. 5, part, 11 part. 1886, c. 32, s. 4.

5. Bill of sale given as security for debt due or accruing due shall be accompanied by an affidavit that consideration was due or accruing due and bill of sale was made in good faith and by way of security for payment and not for the mere purpose of protecting chattels from creditors.—If the bill of sale is other than a bill of sale mentioned in the next preceding section, it shall be accompanied by an affidavit of the grantor, stating that the amount set forth therein as being the consideration thereof was at the time of making such bill of sale justly and honestly due or accruing due from the grantor to the grantee, as the case may be, that the bill of sale was executed in good faith for the purpose of,—

- (a) securing to the grantee the payment of such amount; or
 - (b) payment to the grantee of such amount,
- and was not made for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against such grantor.

(2) **Form of affidavit.**—Such affidavit shall be as nearly as may be in the form "A" in the schedule.

(3) **Such bill of sale only to take effect, &c., from time of filing affidavit.**—And every bill of sale in this section mentioned shall, as against purchasers and creditors, only take effect and have priority from the time of the filing of such bill of sale accompanied by such affidavit. R.S., c. 92, ss. 4 part, 11 part; 1886, c. 32, s. 3.

6. Agent executing bill of sale to make the affidavits.—Where a bill of sale is executed by an agent or attorney, duly authorized in writing to execute the same, and such agent or attorney has a personal knowledge of the matters to be deposited to, the affidavits mentioned in the next two preceding sections may be made by such agent or attorney. R.S., c. 92, ss. 14 part, 5 part.

RENEWAL OF BILLS OF SALE.

7. Renewal statements of interest of grantor amount due and payments on account to be filed.—(1.) Bills of sale shall be renewed by filing in the registry of deeds of the registration district in which the grantor, if a resident of Nova Scotia, resides at the time of the renewal, but if he is not a resident of Nova Scotia then in the registry of deeds for the registration district in which the personal chattels then are, a renewal statement shewing,—

(a) the interest of the grantee, his executors, administrators or other assigns in the property claimed by the grantee of the bill of sale;

(b) the amount due for principal and interest on the bill of sale; and

(c) all payments made on account thereof.)

(2) **Affidavit verifying statement and negating fraud.**—Such statement shall be accompanied by an affidavit stating that the renewal statement is true, and that the bill of sale has not been kept on foot for any fraudulent purpose.

(3) **Affidavit to be made by grantor or grantee, assignee, &c., next of kin, &c., or agent of.**—Such affidavit may be made by,—

(a) the grantor or grantee or one of several grantors or grantees;

(b) the assignee or one of several assignees if the bill of sale has been assigned;

(c) any next of kin, executor or administrator of a deceased grantee or of a deceased assignee; or

(d) the agent of a grantee or of any next of kin, executor, administrator or assignee duly authorized.

(4) **Form of renewal statement and affidavit, amending errors in, &c.**—The renewal statement and affidavit shall be in the form "C" in the schedule, or to the like effect, provided that if any *bona fide* error is made in such statement either by the omission to give any credit, or by any miscalculation in the computation of interest or otherwise, the said statement and the said bill of sale shall not be invalidated if the grantee, his executors, administrators or other assigns, within two weeks after the discovery of the error, files an amended statement and affidavit in the said form "C," and referring to the former statement, and clearly indicating the error therein and correcting the same.

(5) **Rights of creditors or purchaser, etc., before amendment made.**—If prior to the filing of such amended statement and affidavit any creditor or purchaser in good faith and for valuable consideration had made any *bona fide* advance of money or given any valuable consideration to the grantor, or has incurred any costs in proceedings taken on the faith of the amount due on any bill of sale being as stated in the renewal statement filed, the said bill of sale as to the amount so advanced or the valuable consideration so given, or costs incurred by such creditor or purchaser, shall stand good only for the amount mentioned in the renewal statement in which the error was made.

(6) **Renewal statement to be filed every three years within 30 days of expiration.**—A renewal statement and affidavit shall be filed within thirty days next preceding the expiration of the term of three years from,—

- (a) the filing of every bill of sale or copy, and
- (b) the filing of every renewal statement and affidavit or amended renewal statement.

(7) **Otherwise bill of sale to be invalid, &c.**—And every bill of sale shall cease to be valid as against the creditors of the persons making the same and against subsequent purchasers, if any renewal statement and affidavit required by this section are not filed in accordance with the provisions hereof.

(8) **In case of bills of sale filed before January first, 1900, first renewal statement to be filed.**—In the case of bills of sale filed before the first day of January, 1900, the first of such renewal statements and affidavits shall be filed within thirty days next preceding the first day of January, 1902.

8 (1) Every hiring lease, bailment, or bargain for the sale of personal chattels, accompanied by an immediate delivery, and followed of an actual and continual change of possession, whereby it is agreed:—

- (a) That the property in the personal chattels, or

(b) In case of a bargain for sale, that a lien thereon for the price thereof, shall remain in the person letting to hire, the lessor, the bailor, or the bargainor, until payment in full of the hire, rental or price agreed upon, by future payments or otherwise and whether the personal chattels so delivered be the identical subject matter of the hiring, lease, bailment, or bargain for sale or otherwise, shall be evidenced by instrument or instruments, in writing, showing the terms of such agreement, and be signed by the person to whom such personal chattels are hired, by the lessee, bailee, bargainee, or his agent thereunto duly authorized, in writing, and shall have written or printed therein, the post office address of the person letting to hire, lessor, bailor, or bargainor.

(2.) Within ten days after the delivery of such chattel or chattels a true copy of such instrument or instruments in writing shall be filed in the registry of deeds for the registration district in which the person to whom such personal chattels are hired, the lessee, bailee, or bargainee resides at the time of the execution thereof, and the same shall be accompanied by an affidavit of either of the parties thereto, or, if such hiring, lease, bailment, or bargain for sale was made, by, with, or to an agent thereunto duly authorized in writing, the affidavit of such agent stating:—

(a) That the said copy or copies of such instrument or instruments truly sets forth the terms, nature, and effect of the agreement between the parties thereto with respect to the personal chattels therein mentioned; and.

(b) That said instrument or instruments was or were executed in good faith, and for the purpose of securing to the person letting to hire, the lessor, the bailor, or the bargainor the payment in full of the amount therein mentioned as to be paid, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the person to whom such personal chattels are hired, the lessee, bailee or bargainee, or of preventing such creditors from recovering any claim which they may have against him.

(3) Such affidavit shall be as nearly as may be in the form "D," in the schedule.

(4) The Registrar on receipt of such copy or copies and affidavit shall duly file the same, and cause them to be properly entered in the index book kept for that purpose.

(5) The person letting to hire, lessor, bailor or bargainor, shall leave a copy or copies of such instrument or instruments, in writing, with the person to whom such personal chattels are hired, the lessee, bailee, or bargainee at the time of the execution of such writing or within twenty days thereafter.

(6) If a copy or copies of such instrument or instruments in writing, and affidavit, be not filed as required by sub-section (2) of this section, the agreement between the parties that such property or such lien shall remain in such person letting to hire, lessor, bailor, or bargainor, as aforesaid, shall as against the creditors, purchasers and mortgagees of the person to whom such personal chattels are hired, of the lessee, of the bailee, or of the bargainee, be null and void.

(7) Every person letting to hire, lessor, bailor, or bargainor, shall on demand by any creditor or interested person, file with said Registrar, within twenty days from the making of said demand, a sworn statement of the amount due on such agreement, and on failure to file said statement shall forfeit all rights accruing under the same as against such creditor or interested person, and as to such creditor or interested person, the agreement between the parties that such property, in such lien shall remain in such person letting to hire, such lessor, bailor, or bargainor as aforesaid shall thenceforth be null and void. It shall be sufficient to make such demand by mailing the same, postage prepaid and registered, to the post office address of the person letting to hire, lessor, bailor, or bargainor, as stated in the instrument or instruments filed in the Registry of deeds, under the provisions of this Act.

(8) In case any person letting to hire, lessor, bailor, or bargainor of any personal chattels, as aforesaid or his accessors in interest, takes or take possession thereof for breach of any condition, he or they shall retain the same for three months, and the person to whom such personal chattels are hired, the lessee, bailee, or bargainee or his successor in interest may redeem the same within such period or payment of the full amount then in arrears, together with interest.

(9) When personal chattels have been let to hire, leased, bailed, or bargained, originally as aforesaid, and a copy of the agreement between the parties filed according to the provision of this Act, and the same have been taken possession of as in the next preceding sub-section mentioned, such chattels shall not be sold without twenty days' notice of the intended sale being first given to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest. The notice may be personally served, or may, in the absence of such person to whom, such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, be left at his residence, or last known place of abode in Nova Scotia, or be sent by registered letter deposited in the post office at least twenty-two days before the time when the said twenty days will elapse addressed to the person to whom such personal chattels are hired, the lessee, bailee, or bargainee, or his successor in interest, at his last known post office address in Canada. (As amended by 7 Edw. VII., c. 42, s. 1, and 8 Edw. VII., c. 24, ss. 1, 2 and 3.)

GENERAL PROVISIONS.

9. In case of non-residence of grantor and chattels removed from one registration district to another, a copy of instrument and affidavits to be filed in latter district.—Where the grantor is not a resident of Nova Scotia, in the event of the permanent removal of personal chattels from the registration district in which they were at the time of the execution of the bill of sale or other instrument to another registration district before the payment and discharge of the bill of sale or instrument, a copy of the same and of the affidavits and documents relating thereto, certified under the hand of the registrar in whose registry the same were first filed, shall be filed in the registry of deeds for the registration district to which the personal chattels are removed within two months from such removal, otherwise the bill of sale or instrument as against creditors or purchasers shall be null and void.

10. Indexes to be kept of instruments filed.—The registrar of deeds shall cause the bills of sale or copies and instruments required by this Chapter to be filed, to be numbered and indexed, and a list thereof to be made in a book kept by him for that purpose, containing the names and descriptions of the parties in alphabetical order, the date of execution and filing, and the amounts of the consideration for which the same have been given. R.S., c. 92, s. 7 (part.)

11. Entry discharge or release upon certificate of holder.—Where a bill of sale or other instrument is discharged or released, an entry of such discharge or release may be made in the registry list upon the production of a certificate from the holder of such bill of sale, duly attested to by the affidavit of a subscribing witness, and such certificate or release shall be indexed and entered on the list and on the files kept by the registrar. R.S., c. 92, s. 8, part; 1886, c. 32, s. 6.

12. Affidavits to be sworn before registrar of deeds, judge, commissioner, justice or notary.—(1). The affidavits mentioned in this Chapter may be made before the registrar of deeds, a judge of any court, a barrister of the Supreme Court, a commissioner for taking affidavits, a justice of the peace, or any notary public, whether within the province or abroad.

(2). If the affidavit is made by the agent or attorney of the person required to make the same, it shall be set out in such affidavit that such agent or attorney making the same has a personal knowledge of the matters deposed to. R.S., c. 92, ss. 6, 8, part; 1886, c. 32, s. 5. (as amended by 7 Edw. VII., c. 42.)

13. Registrar's fees as in Chapter of costs and fees.—The registrar shall for his services under this Chapter be entitled to the fees mentioned in the Chapter "Of Costs and Fees." R.S., c. 92, ss. 7 part, 9 part.

SCHEDULE.

(A)

(Section 4.)

AFFIDAVIT OF BONA FIDES.

Canada,
 Province of Nova Scotia, }
 County of
 I, A.B., of

in the county of

(occupation) make oath and say as follows:

1. I am the grantor mentioned in the bill of sale (*or* the bill of sale a copy of which is) hereto annexed [*or* I am the agent or attorney of the grantor mentioned in the bill of sale (*or* the bill of sale a copy of which is) hereto annexed, duly authorized in that behalf in writing, and have a personal knowledge of the matters hereinafter deposed to.]

2. Such bill of sale truly sets forth,—

The terms, nature and effect of the agreement entered into between the parties in respect to the advances therein mentioned (*or*

The terms, nature and effect of the indorsements made or given by the grantee for the grantor, *or*

The terms, nature and effect of the liability incurred by the grantee for the grantor, *or*

The terms, nature and effect of the agreement in respect to the liability to be incurred by the grantee for the grantor.)

And truly states the amount of the liability created (*or* by such agreement intended to be created) and to be covered by the bill of sale.

3. Such bill of sale was executed in good faith, and for the purpose of securing the grantee,

repayment of his advances, *or*,

against loss or damage by reason of his indorsements, *or*,

against loss or damage by reason of the liability incurred by the grantee for the grantor, *or*,

against loss or damage by reason of such agreement in respect to the liability to be incurred,)

and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against such grantor.

Sworn to at
 in the county
 of
 day of

this
 A.D., 19 }

(Sgd) A.B.

before me,

N. S. BILLS OF SALE ACT.

(B)

(SECTION 5).

AFFIDAVIT OF BONA FIDES.

Canada,
Province of Nova Scotia, }
County of
I, A.B., of } in the county of
(occupation) make oath and say as follows:

1. I am the grantor mentioned in the bill of sale (or the bill of sale a copy of which is) hereto annexed [or I am the agent or attorney of the grantor mentioned in the bill of sale (or the bill of sale a copy of which is) hereto annexed, duly authorized in that behalf in writing, and have a personal knowledge of the matters hereinafter deposed to.]

2. The amount set forth therein as being the consideration thereof was at the time of making such bill of sale justly and honestly due (or accruing due, as the case may be) from the grantor to the grantee.

3. The bill of sale was executed in good faith and for the purpose of, securing to the grantee the payment of such amount.
(or payment to the grantee of such amount.)

4. Such bill of sale was not made for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the grantor, or of preventing such creditors from recovering any claims which they have against such grantor.

Sworn to at _____ this _____ day of _____ A.D., 19 _____ } (Sgd) A.B.
before me.

(C)

(Section 7.)

RENEWAL STATEMENT AND AFFIDAVIT.

Statement exhibiting the interest of C.D., in the property mentioned in a bill of sale, dated the _____ day of _____ 19____, made between A.B., of _____ of the one part, and C.D., of _____ of the other part, and filed in the registry of deeds for the registration district of _____ on the _____ day of _____ 19____, and of the amount due for principal and interest thereon, and of all payments made on account thereof.

The said C.D., is still the grantee of said property, and has not assigned the bill of sale (or the said E.F., is the assignee of the said bill of sale by virtue of an assignment thereof from the said C.D., to him, dated the day of 19 (or as the case may be.)

No payments have been made on account of the said bill of sale (or the following payments and no others have been made on account of the said bill of sale).

19 , January 1. Cash received (\$)

The amount due for principal and interest on the said bill of sale, is the sum of \$ _____, computed as follows (here give the

computation.)

County of

To wit: }
 I of } in the county of
 the grantee named in the bill of sale mentioned in the foregoing (or annexed) statement [or assignee of the grantee named in the bill of sale mentioned in the foregoing (or annexed) statement] make oath and say:

That the foregoing (or annexed) statement is true.

That the bill of sale mentioned in the said statement has not been kept on foot for any fraudulent purpose.

Sworn before me at } in the
 County of } this
 day of } 19

SCHEDULE (D)

Section 1 (8).

AFFIDAVIT OF BONA FIDES.

Canada
 Province of Nova Scotia }
 County of }

I, A.B., of in the County of
 (occupation) make oath and say as follows:

1. I am (name) one of the parties mentioned in the written instrument, a true copy of which is hereto annexed (or I am the agent or attorney of (name) one of the parties mentioned in the written instruments a true copy of which is hereto annexed, duly authorized in that behalf, in writing, and have a personal knowledge of the matters hereinafter deposed to)

2. Such written instrument truly sets forth the terms, nature, and effect of the agreement between the parties thereto with respect to the personal chattels herein mentioned.

3. Such written instrument was executed in good faith and for the purpose of securing unto (name) one of the parties thereto, payment in full of the amount therein mentioned as to be paid, and not for the mere purpose of protecting the personal chattels therein mentioned against the creditors of the said the person to whom such chattels are hired (or the lessee, bailee or bargainee) or of preventing such creditors from recovering any claims which they may have against said person to whom said personal chattels are hired (or the lessee, etc.)

Sworn to at } in the County of }
 this } day of }

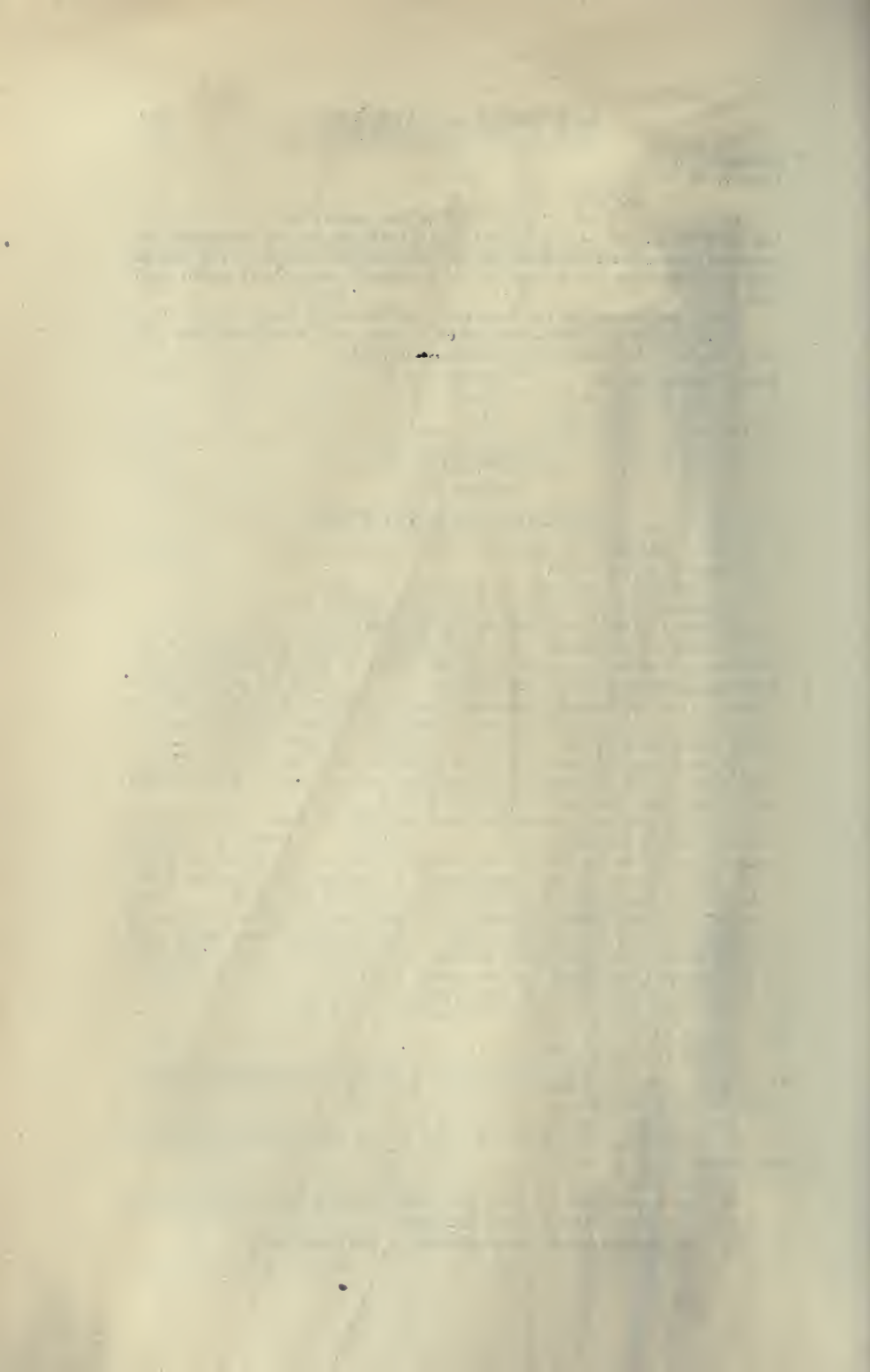
A.D. 19 .
 Before me

The amending Act, 7 Edw. VII., c. 42, as amended by 8 Edw. VII., c. 24, provides:

1. (Amending sec. 8, of R.S. N.S., c. 142 and adding schedule D. as above).

2. The provisions of this Act shall extend to contracts made outside the province of Nova Scotia.

3. (Amending sec. 12 of R.S. N.S. c. 142 as above.)



Assignments and Preferences by Insolvent Persons, Voluntary and Fraudulent Conveyances, Statute of Frauds.

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BRITISH COLUMBIA

R. S. B. C. 1897, Chap. 85

AN ACT FOR PREVENTION OF FRAUDS AND PERJURIES. (FOR PREVENTION OF MANY FRAUDULENT PRACTICES, WHICH ARE COMMONLY ENDEAVOURED TO BE UPHELD BY PERJURY AND SUBORNATION OF PERJURY.)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as the “Statute of Frauds.”

2. Parol leases and interest of freehold shall have the force of estates at will only.—All leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of any messuages, manors, lands, tenements or hereditaments made or created by livery of seisin only or by parol, and not put in writing and signed by the parties so making or creating the same, or their agents thereunto lawfully authorised by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol, leases, or estates, or any former law or usage to the contrary notwithstanding. 29 Car. 2, c. 3, s. 1.

3. Except leases not exceeding three years.—Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount to two-thirds parts at the least of the full improved value of the thing demised. 29 Car. 2, c. 3, s. 2.

4. No leases or estates of freehold shall be granted or surrendered by parol.—No leases, estates, or interests, either of freehold or terms of years, or any uncertain interest, not being copyhold or customary interest of, in, to, or out of any messuages, manors, lands, tenements, or hereditaments, shall be assigned, granted or surrendered, unless it be by deed or note in writing, signed by the party so assigning, granting or surrendering the same, or their agents thereunto lawfully authorised by writing, or by act and operation of law. 29 Car. 2, c. 3, s. 3.

5. Promises and agreements by parol.—No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or whereby to charge the defendant upon any special promise to answer for the debt, default or miscarriages of another person; or to charge any person upon any agreement made upon consideration of marriage; or upon any contract or sale of lands, tenements, or hereditaments, or any interest in or concerning them; or upon any agreement that is not to be performed within the space of one year from the making

thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised. 29 Car. 2, c. 3, s. 4.

6. Consideration for guarantee need not appear by writing.—No special promise made by any person to answer for the debt, default, or miscarriage of another person, being in writing and signed by the party to be charged therewith, or some other person by him thereunto lawfully authorised, shall be deemed invalid to support an action, suit, or other proceeding to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document. 19 and 20 Vict. (Imp.), c. 97, s. 3.

7. Declarations or creations of trusts to be in writing.—All declarations or creations of trusts, or confidences of any lands, tenement, or hereditaments, shall be manifested and proved by some writing, signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect. 20 Car. 2, c. 3, s. 7.

8. Trusts arising by implication of law excepted.—Provided always, that where any conveyance shall be made of any lands or tenements by which a trust or confidence shall or may arise or result by the implication or construction of law or be transferred or extinguished by an act or operation of law, then and in every such case such trust or confidence shall be of the like force and effect as the same would have been if this Statute had not been made, anything hereinbefore contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 8.

9. Assignments of trusts to be in writing.—All grants and assignments of any trust or confidence shall likewise be in writing, signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void and of none effect. 29 Car. 2, c. 3, s. 9.

10. Lands, etc., shall be liable to judgments of "cestui que trust."—It shall and may be lawful for every sheriff or other officer to whom any writ or precept is, or shall be directed, at the suit of any person or persons, of, for, and upon any judgment, statute or recognizance hereafter to be made or had, to do, make, and deliver execution unto the party in that behalf suing, of all such lands, tenements, rectories, tithes, rents, and hereditaments, as any other person or persons be in any manner of wise seised or possessed, or hereafter shall be seised or possessed, in trust for him against whom execution is so sued, like as the sheriff or other officer might or ought to have done if the said party against whom execution hereafter shall be so sued had been seised of such lands, tenements, rectories, tithes, rents, or other hereditaments of such estate as they be seised of, in trust for him at the time of the said execution sued.

And held free from the incumbrances of the persons seised in trust.—Which lands, tenements, rectories, tithes, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held or enjoyed, freed and discharged from all incumbrances of such person or persons as shall be so seised or possessed, in trust for the person against whom such execution shall be sued.

Trusts shall be assets in the hands of the heirs.—And if

any *cestui que trust* hereafter shall die, leaving a trust in fee simple to descend to his heir, there and in every such case such trust shall be deemed and taken, and is hereby declared to be, assets by descent, and the heir shall be liable to and chargeable with the obligation of his ancestors for and by reason of such assets, as fully and amply as he might or ought to have been, if the estate in law had descended to him in possession in like manner as the trust descended, any law, custom, or usage to the contrary in anywise notwithstanding. 29 Car. 2, c. 3, s. 10.

11. No heir shall by reason thereof become chargeable of his own estate.—No heir that shall become chargeable by reason of any estate or trust made assets in his hands by this law, shall, by reason of any kind of plea, or confession of the action, or suffering judgment by *nient dedire* or any other matter, be chargeable to pay the condemnation out of his own estate; but execution shall be sued out of the whole estate so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir-at-law pleading a true plea judgment is prayed against him thereupon, anything in this present Act contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 11.

12. Representations of character and credit.—No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods thereupon, unless such representation or assurance be made in writing, signed by the party to be charged therewith. 9 Geo. 4, c. 14, s. 6.

R. S. B. C., 1897. CHAP. 86.

AN ACT AGAINST FRAUDULENT AND PREFERENTIAL DEEDS, ALIENATIONS, JUDGMENTS, ETC.

Fraudulent deeds made to avoid the debts of others shall be void, and the penalties of the parties to such fraudulent assurances.—For the avoiding and abolishing of feigned, convinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore: Which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions have been and are devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose, and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortgages and reliefs, not only to the let or hindrance of the due course and execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining, and chivance between man and man, without the which no commonwealth or civil society can be maintained or continued:

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the “Fraudulent Conveyance Act.”

2. All fraudulent conveyances made to avoid the debt or duty of others shall be void.—All and every feoffment, gift, grant, alienation, bargain, and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common, or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution, at any time heretofore had or made, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken (only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, convinous, or fraudulent devices and practices as is aforesaid are, shall, or might be in any ways disturbed, hindered, delayed, or defrauded) to be clearly and utterly void, frustrate, and of none effect; any pretence, colour, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. 13 Eliz., c. 5, s. 1.

3. The forfeiture of the parties to fraudulent deeds.—Who shall have the forfeiture, and by what means.—All and every the parties to such feigned, convinous, or fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy and knowing or the same, or any of them, which at any time shall wittingly and willingly put in ure, avoy, maintain, justify, or defend the same, or any of them, as true, simple and done, had, or made *bona fide* and upon good consideration, or shall alien or assign any the lands, tenements, goods, leases, or other things before mentioned to him or them conveyed as is aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements and hereditaments, leases, rents, commons, or other profits of or out of the same, and the whole value of the said goods and chattels, and also so much money as are or shall be contained in any such convinous and feigned bond, the one moiety whereof to be to the Queen's Majesty, her heirs and successors, and the other moiety to the party or parties grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons, profits, charges, and other things aforesaid, to be recovered in any of the Queen's Courts of Record by action of debt, bill, plaint, or information, wherein none essoin, protection or wager of law shall be admitted for the defendant or defendants, and also, being thereof lawfully convicted, shall suffer imprisonment for one half-year without bail or mainprize. 13 Eliz., c. 5, s. 2.

4. Estates made upon good consideration and “bona fide,” excepted.—Provided that this Act, or anything therein contained, shall not extend to any state or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured which estate or interest is or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, bodies politic or corporate, not having, at the time of such conveyance or assurance to them made, any manner of notice

or knowledge of such covin, fraud, or collusion as is aforesaid, anything before mentioned to the contrary hereof notwithstanding. 13 Eliz., c. 5, s. 5.

5 EDWARD VII., CHAP. 24.

AN ACT RESPECTING ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS.

[8th April, 1905.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the “Fraudulent Preferences Act, 1905.”

2. Confessions or warrants to confess judgments, given by insolvents to defeat or delay creditors, or to give one preference over the other to be void.—In case any person, being at the time in insolvent circumstances or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, with intent, in giving such confession, *cognovit actionem*, or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of his creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem*, or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

3. Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void.—(1.) Subject to the provisions of section 4 of this Act, every gift, conveyance, assignment, transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, shall,—

(a) If made with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, be, as against the creditor or creditors injured, delayed or prejudiced, utterly void; and

(b) **Transfers with intent to prefer creditors.**—If made to or for a creditor with intent to give such creditor preference over his other creditors or over any one or more of them, be, as against the creditor or creditors injured, delayed, prejudiced or postponed, utterly void.

(2) **Transfers having effect of preference void if attacked within sixty days.**—Subject to the provisions of section 4 aforesaid, every such gift, conveyance, assignment or transfer, delivery over or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency,

and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall,—

(a) In and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced or postponed; and

(b) Or if assignment made within sixty days.—If the debtor, within sixty days after the transaction, makes an assignment for the benefit of his creditors, be utterly void as against the assignee or any creditor authorised to take proceedings to avoid the same.

(3) **What transactions to be deemed preferential.—Intent or motive immaterial.—Pressure or want of knowledge on part of creditor not to save the transaction.**—A transaction shall be deemed to be one which has the effect of giving a creditor a preference over the other creditors within the meaning of sub-section (2) of this section, if by such transaction a creditor is given or realises, or is placed in a position to realise, payment, satisfaction or security for the debtor's indebtedness to him, or a portion thereof, greater proportionately than could be realised by or for the unsecured creditors generally of such debtor, or upon the unsecured portion of his liabilities, out of the assets of the debtor left available and subject to judgment, execution, attachment or other process, and such effect shall not be deemed dependent upon the intent or motive of the debtor, or upon the transaction being entered into voluntarily or under pressure; and no pressure, by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, shall avail to protect the transaction, except as provided by section 4 hereof.

(4) **Creditor for certain purposes to include surety and indorser.**—When the word "creditor" or "creditors" occurs in sub-sections (1), (2) and (3) of this section, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would, upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said sub-sections, and such word shall include a *cestui que trust* or other person to whom the liability is equitable only.

4. Assignments for benefit of creditors and "bona fide" sales, etc., protected.—Proviso.—(1) Nothing in the preceding section shall apply to any assignment made by a debtor for the benefit of his creditors generally under the provisions of the "Creditors' Trust Deeds Act, 1901," for the purpose of paying, ratably and proportionately and without preference and priority, all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind as above mentioned, which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money, or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property;

provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor.

(2) Transfer to creditor of consideration for sale invalid.—

In case of a valid sale of goods, securities or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made.

(3) Security given up upon void payment to be returned.—

In case a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

(4) Payment of wages protected.—Exchange of securities protected.—Certain assignments to be valid.—Nothing herein contained shall affect a claim for wages or salary under the provisions of the "Creditors' Trust Deeds Act, 1901," and amending Acts, or shall prevent a debtor providing for payment of preferred wages or salary due by him in accordance with the provisions of the said Act, or payments or securities given for the said preferred wages or salary, or any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of or has in good faith given up any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor, nor the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full.

5. Following proceeds of property fraudulently transferred.—In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which in law is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realised or collected the property or any part thereof, the money or other proceeds or the amount or value thereof, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made.

6. Repeals R. S. 1897, c. 87.—Chapter 87 of the Revised Statutes, 1897, being the "Fraudulent Preference of Creditors Act," is hereby repealed.

I. EDWARD VII., CHAP. 15.

AN ACT RESPECTING ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

[May 11th., 1901.]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the "Creditors' Trust Deeds Act, 1901."

2. Interpretation.—In this Act, unless the context otherwise requires:—

(a) "**Assignment under this Act.**"—The expression "assignment under this Act," means any assignment of property made by a debtor for the benefit of his creditors generally, and not made under the authority of any Act of the Parliament of Canada respecting bankruptcy or insolvency.

3. Assignment for the benefit of creditors to be deemed valid if its construction and effect accord with its purpose.—Every instrument executed after the 26th day of April, 1890, whereby any property shall be expressed to be conveyed, assigned, or otherwise transferred by any person to an assignee for the purpose of paying and satisfying, ratably or proportionately, and without preference or priority, all the creditors of such person their just debts, shall be deemed to be and be a good, valid and subsisting conveyance, if its construction and effect shall accord with its expressed purpose, and shall not be set aside or defeated on any account whatsoever except actual fraud, notwithstanding any statute or law to the contrary.

4. Description of property.—Every assignment under this Act shall be valid and sufficient if it describes the property intended to be affected thereby in the words following, that is to say: "All my personal property, real estate, credits and effects, which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging at the time of the assignment to the debtor, except such as are by law exempt from seizure or sale under execution or certificate of judgment, subject, however, as regards lands, to the provisions of the "Land Registry Act," and the "Torrens Registry Act, 1899."

5. Dating assignment.—No assignment under this Act shall be dated after the execution thereof by the assignor.

6. Amendment of assignment by Judge.—No advantage shall be taken or gained by any creditor or by any mistake, defect or imperfection in any assignment under this Act, if the same can be amended or corrected, and if there be any mistake, defect or imperfection therein, the same shall be amended by any Judge of the Supreme Court of British Columbia on application by any creditor of the assignor or on application by the assignee, on such notice being given to other parties concerned as the Judge shall think reasonable, and such amendment, when made, shall have relation back to the date of said assignment, but no such amendment shall be made so as to prejudice the rights of any innocent purchaser.

7. Notice of assignment.—No assignment under this Act shall be within the operation of the "Bills of Sale Act," but notice of the assignment shall be published by the assignee in one issue of the British Columbia Gazette and in one issue of one newspaper having a general circulation in the County in which such assignment is registered. Such notice shall be published in the regular issue of said British Columbia Gazette and said newspaper issued first after ten days from the date of the assignment. Such notice shall contain the date of the assignment, the name, residence, and occupation of the debtor and assignee.

8. Assignment to be registered.—A counterpart of every such assignment shall also, within twenty-one days from the date thereof, be registered, together with an affidavit of a witness thereto of the due execution of such assignment, in the office of any County Court Registrar in which a bill of sale of the personal property or any part thereof so assigned should be registered, and such Registrar shall file all such instruments presented to him for that purpose, and shall endorse thereon the time of receiving the same in his office, and the same shall be kept there for inspection by all persons interested therein. The said Registrar shall number and enter such assignments and shall collect the same fees as if such assignments had been registered under the "Bills of Sale Act."

9. Penalty against assignor for neglecting publication or registration.—If the said notice is not published in the regular number of the British Columbia Gazette and in such newspaper as aforesaid, which shall respectively be issued first after twenty-one days from the date of the assignment, or if the assignment is not registered, as aforesaid, within twenty-one days from the execution thereof, the assignor shall be liable to a penalty of ten dollars for each and every day which shall pass after the issue of the number of the Gazette or newspaper in which the notice should have appeared until the same shall have been published, and a like penalty for each and every day which shall pass after the expiration of twenty-one days from the date of the assignment until the same shall have been registered.

10. Penalty against assignee for neglecting publication or registration.—The assignee shall be subject to the like penalty as in section 9 hereinbefore provided, for each and every day which shall pass after the expiration of twenty-one days from the delivery of the assignment to him, or of twenty-one days after his assent thereto until the assignment is published and registered as aforesaid. (As amended by 2 Edw. VII., c. 18, s. 2).

11. Recovery of above-mentioned penalties.—Such penalties may be recovered summarily before a Judge of the Supreme Court or of the County Court of the County in which the assignment ought to be published or registered. One-half of the penalty shall go to the party suing, and the other half for the benefit of the estate of the assignor.

12. Compelling publication and registration.—In case the assignment be not registered and notice thereof published, an application may be made, by any one interested in the assignment, to a Judge of the Supreme or County Court to compel the publication and registration thereof, and the Judge shall make his order in that behalf, with or without costs, or upon the payment of costs by such person as he may, in his discretion, direct to pay the same.

13. Assignment not invalidated by omission to publish.—The omission to publish or register as aforesaid, or any irregularity in the publication or registration shall not invalidate the assignment.

14. Effect upon land of registration of assignment.—(1) Every such assignment, when registered in any Land Registry Office, or under the provisions of the "Torrens Registry Act, 1899," shall take precedence of all certificates of judgments and executions and attachments against land not completely executed by payment, subject to a lien for the costs of such judgment creditors: Provided, however, that this section shall not interfere with any priorities given by section 9 of Chapter 11 of the "Revised Statutes, 1897," but such priorities shall apply only to judgments registered prior to the coming into force of this Act.

(2) **Assignment to take precedence of judgments, executions and attachments against goods.**—Every such assignment shall take precedence of all judgments, of all executions against goods and of all attachments of debts not completely executed by payment, subject to a lien in favour of such execution creditors for their costs. (As amended by 2 Edw. VII., c. 18, s. 3.)

15. Assignee to call meeting of creditors.—It shall be the duty of the assignee immediately to inform himself, by reference to the debtor and his records of accounts, of the names and residences of the debtor's creditors, and within five days from the date of assignment to convene a meeting of the creditors for the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered, to every creditor known to him, a circular calling a meeting of creditors to be held at some convenient place to be named in the notices, not later than fourteen days after the mailing of such notice, and by advertisement in the British Columbia Gazette, and all other meetings shall be called and held in like manner, except that no advertisement shall be required.

16. Voting at creditors' meetings.—At any meeting of creditors a creditor may vote in person, or by proxy, authorised in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit or declaration in proof of his claim, stating the amount and nature thereof.

17. Proof of claim.—(1) Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit or declaration, and such vouchers as the nature of the case admits of. A creditor proving his claim shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

(2) With regard to claims not bearing interest, creditors shall be entitled to add to such claims interest from the time the same were payable to the date of the assignment, at the legal rate.

18. Creditor may prove claim not due.—A person whose claim has not accrued due, shall, nevertheless be entitled to prove under the assignment and vote at the meeting of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

19. Set-off against claims.—The law of set-off shall apply to

all claims made against the estate, and also to all suits instituted by the assignee for the recovery of debts due to the assignor, in the same manner, and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim or set-off shall be affected by the provisions of any Act respecting frauds or fraudulent preferences: Provided, however, that there shall be no set-off allowed of any claim against the estate acquired after the date of the assignment as against a claim made by the estate against the person so acquiring any such claim against the estate.

20. Personal and partnership debts.—If any assignor executing an assignment under this Act for the general benefit of his creditors, owes debts both individually and as a member of a partnership or co-partnerships, the claim shall rank first upon the estate by which the debts they represent were contracted and shall only rank upon the others after all the creditors of those others have been paid in full.

21. Calculation of votes.—Except with regard to the provisions of section 23 of this Act, all subjects discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows.—

There shall be allowed—

(a) For every claim of or over twenty-five dollars, and not exceeding one hundred dollars, one vote; and

(b) For every claim over one hundred dollars, and not exceeding three hundred dollars, two votes; and

(c) For every claim over three hundred dollars, and not exceeding six hundred dollars, three votes; and

(d) For every claim over six hundred dollars, and not exceeding one thousand dollars, four votes; and

(e) For every additional one thousand dollars, or portion thereof, one vote:

Provided, however, that in case any question arises respecting the claim of any creditor, or respecting the securities held by any creditor, such creditor shall not be allowed to vote on such question.

22. Casting vote.—In case of a tie the assignee, or if there are two assignees, then the assignee nominated for that purpose by the creditors, shall have a casting vote.

23. Resolution at first meeting of creditors requiring assignee to transfer estate.—At the first meeting of creditors, or at any subsequent meeting, a majority in votes of the creditors present in person or by proxy may pass a resolution requiring the assignee to transfer the estate to some other person named in such resolution as assignee, then, and in such case the said original assignee shall forthwith deliver over to such person the property and effects belonging to the estate, and execute all conveyances, assignments and transfers necessary to vest the said estate in said assignee, and thereupon such person so named shall become and be the assignee of such estate under the provisions of this Act.

24. Remuneration of original assignee upon transfer of estate.—Said original assignee shall, in case of such change, be entitled to be paid such remuneration as the creditors may at the meeting of which such change is made decide, subject to an appeal to the District Registrar of the Supreme Court for the district in which the assignment is registered. In case the creditors do not settle the said remuneration as aforesaid, then such District Registrar shall

have power to do so on application by the original assignee on notice to the new assignee.

25. Verification of resolution requiring change of assignee.—Registration of resolution.—A copy of said resolution mentioned in section 23, signed by the Chairman or other presiding officer of the meeting and verified by an affidavit of some person present at the meeting, setting forth the names of the creditors present in person or by proxy at said meeting, and the result of the vote on the resolution, may be registered in any Land Registry Office or Land Titles Office, and when so registered shall have the effect of vesting in such new assignee all the real estate situate in the district of such office which the debtor vested in the original assignee by virtue of the deed of assignment, and such resolution so verified may be registered in any office provided for the registration of bills of sale, and when so registered shall have the effect of vesting in such new assignee all the personal property situate in the County of such office which the debtor vested in the original assignee by virtue of the assignment.

26. Removal of assignee by Judge of Supreme Court.—Any Judge of the Supreme Court may, on the application of any creditor of the debtor, made by petition, supported by the affidavit of the applicant, remove any person who for the time being shall be entitled to act under any trust declared in or created by any such assignment as aforesaid, from the office of assignee, and appoint another person as assignee in the place of the person so removed, and also, with the consent of a majority in number representing three-fourths in value of the creditors of the debtor, expunge from any such assignment, any condition or stipulation therein contained, or with the like consent alter or vary any trust in or by the assignment declared or created, and the costs of and incidental to any such application shall be a charge on and paid out of the trust estate, unless otherwise ordered by the Judge.

27. Mode of transfer where assignee neglects or refuses to transfer.—In case any such assignee refuses or neglects to deliver over to such new assignee so appointed by the creditors, or a Judge, any of the property of the estate, or refuses or neglects to execute any document required for the purpose of vesting such property in such new assignee, a Judge of the Supreme Court of British Columbia may, on the application of such new assignee, or of any creditor of such estate for one hundred dollars or more, make an order calling upon such assignee to deliver over such property, or to execute such document or documents, and to pay the costs of such application, and failure to obey such order shall be punished by committal.

28. Publication of resolution for transfer.—The resolution, referred to in section 23, shall be published in one issue of the British Columbia Gazette as soon as it conveniently can be after being passed.

29. Verified copy of resolution as evidence.—The production of a resolution of the creditors, verified as aforesaid, shall in all Courts of Justice be taken as *prima facie* evidence of the vesting of the debtor's estate in the assignee.

30. Application to certain assignments executed before 17th April, 1896, and to all assignments executed after that date.—The provisions of this section shall apply to all assignments executed after the 17th day of April, 1896, and to any estate which

on the 17th day of April, 1896, remained undistributed in the hands of any assignee under any assignment theretofore executed; but the said provisions shall not be deemed to refer to any estate which had been partially distributed, or affect or prejudice any act done, or any payment or distribution of assets made, by any such assignee, prior to the said 17th day of April, 1896:—

(a) **Statement of security in proof of claim.**—Every creditor in his proof of claim shall state whether he holds any security for his claim, or any part thereof, and if such security is on the estate of the debtor or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at the specified value, to be paid, together with interest thereon at the legal rate from the date of filing the claim of the creditor shall be the amount for which he shall rank realised such security, and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate. Before assigning such security such creditor shall be entitled to receive security from such assignee for the value of such security so to be assigned. In case of any dispute a Judge of the Supreme or County Court may settle the same on a summary application;

(b) **Negotiable instruments.**—If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof, but after the maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim;

(c) **Judge may order claim to be proved within certain time.**—In case a person claiming to be entitled to rank on the estate assigned does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this Act, a Judge of the Supreme or County Court may, upon the summary application by the assignee, or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the estate assigned, and shall be wholly barred of any right to share in the proceeds thereof; and if the claim is not so proved within the time so limited, or within such further time as a Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor;

(d) **Saving effect of "Trustees and Executors Act."**—The preceding sub-section is not intended to interfere with the protection afforded the assignee by the "Trustees and Executors Act";

(e) **Contest of claim by assignee.—Procedure.**—At any time

after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge of the Supreme or County Court may on application allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action served on the assignee; and in default of such action being brought and writ served within the time aforesaid, the claim to rank on the estate shall be forever barred;

(f) **Address for service of writ.**—The notice by the assignee shall contain the name and place of business of one of the solicitors of the Supreme Court, upon whom service of the writ may be made; and service upon such solicitor shall be deemed sufficient service of the writ;

(g) **Claims for interest.**—Except as provided in sub-section (a) hereof, no creditor shall be entitled to rank upon the estate for or in respect of any claim for interest for any period subsequent to the date of the assignment, until after all claims for principal money, and all claims for interest on such principal money (where interest is by law payable thereon) calculated down to the date of the assignment, have been fully paid and satisfied.

31. Assignee to call meeting upon request.—In case of a request in writing signed by a majority of the creditors having claims, duly proved or admitted, of fifty dollars and upwards, computed according to the provisions of section 21 of this Act, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors, for a day not later than fourteen days after such request is received.

32. Remuneration of assignee.—(1) The permanent assignee shall be entitled to such remuneration as may be voted to him by the creditors, subject to an appeal to a District Registrar of the Supreme Court. In case no remuneration is voted by the creditors, at the first meeting of creditors, or at the meeting at which such permanent assignee is appointed, such remuneration shall be settled by a District Registrar on notice to the Inspectors. There shall be an appeal from the decision of the District Registrar either by the assignee or the Inspectors, or any creditor on behalf of the creditors, to a Judge of the Supreme Court. Notice of such appeal must be given within four days after the decision of the District Registrar.

(2) Such remuneration shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised and the other part on the amount distributed in dividends.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the debtor's estate, or to the creditors in respect of any expenses which the remuneration is expressed to cover.

(4) An assignee shall not, under any circumstances whatever, make any arrangement for, or accept from the assignor or any solicitor, auctioneer, or any other person that may be employed about an assignment, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration paid by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as assignee, manager, or trustee, to the assignor, or any solicitor or other person that may be employed about an assignment.

33. Inspectors.—At the first or any subsequent meeting the

creditors may appoint one or more of their number, but not exceeding three, as Inspectors, who shall superintend the proceedings of the assignee and the management and winding up of the estate, and they may also revoke the appointment of any or all of the Inspectors, and upon such revocation or in case of the death, resignation or absence from the Province of an Inspector, may appoint another in his stead, and anything to be done by the Inspectors may be done by the majority, or by the sole Inspector if there is only one. The Inspectors shall not be entitled to any remuneration.

34. Application of "Trustees and Executors' Act."—The provisions of the "Trustees and Executors' Act" relating to:—

(a) The payment of debts and claims, the accepting of any composition, or of any security, real or personal, for any debts; the allowing of time for payment of debts, and the submission to arbitration of any matters affecting a trust or trust estate;

(b) The distribution of assets after due notice given, and without liability to creditors having claims of which no notice has been received; and

(c) The right to apply to a Judge of the Supreme Court for opinion and advice in the management of the trust estate shall apply to and shall be construed so as to include an assignee acting under assignments under this Act; Provided, however, that such assignee must obtain the approval of the creditors before acting.

35. Registration of order by Judge appointing new assignee.—In the case of the appointment by a Judge of a new assignee a copy of the order may be registered as provided in section 25 and with the same effect.

36. Wages.—Whenever an assignment is made of any real or personal property for the general benefit of creditors, the assignee shall pay in priority to all claims of the ordinary or general creditors of the person making the same, the wages or salary of all persons in the employment of such person at the time of making such assignment, or within one month before the making thereof, not exceeding three months' wages or salary, and such persons shall be entitled to rank as ordinary general creditors for the residue, if any, of their claims.

37. Application of preceding section.—The preceding section shall apply to wages or salary, whether the employment in respect of which the same shall be payable be by the day, by the week, by the job or piece, or otherwise.

38. Compromising debts.—The assignee may with the approval of the creditors, compromise all debts and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages subsisting or supposed to subsist both to and by the debtor upon the receipt of payment of such sums, payable at such times and generally upon such terms as are agreed upon.

39. Deposit of moneys received by assignee.—All moneys received by the assignee on account of the estate shall forthwith be paid by him into a chartered bank, to be named by the creditors, to the credit of a special account for the estate, and at every meeting of the creditors the bank book shall be produced by the assignee and shall always be open to inspection by the inspectors or any creditor. The assignee shall not in any case pay any money received by him on account of the estate into his private account at any bank.

40. Payments by debtor made 30 days before execution

of assignment void.—Every payment made within ten days next before the execution of an assignment under this Act by the debtor on account of a pre-existing debt shall be void, and the amount so paid may be recovered back from the person to whom it was paid by the assignee by suit in any Court of competent jurisdiction, but if any valuable security was given up in consideration of such payment such security or the value thereof must be restored or credited to the creditor: Provided, however, that no payment for wages (not exceeding three months), or for rent, taxes, or water rates, which are a lien on the property of the debtor, shall be affected by this section.

41. Solicitor to estate.—At any meeting of creditors a resolution may be passed, directing the assignee to employ a person or firm, named in the resolution as solicitor or solicitors to the estate, and thereafter no other solicitor shall be employed by the assignee. Such appointment of solicitor may be changed at any meeting of the creditors by resolution. No such solicitor, after his appointment, shall act in any way for the debtor as long as he continues to act as solicitor for the estate.

42. Qualifications of assignee and his deputies.—No person other than a permanent and *bona fide* resident of this Province shall have power to act as an assignee under this Act, nor shall an assignee under this Act have power to appoint as deputy or delegate his duties as assignee to any person who is not a permanent and *bona fide* resident of this Province, and no charge shall be made or recoverable against the assignor or his estate for any services or expenses of any such assignee, deputy or delegate of any assignee, who is not a permanent and *bona fide* resident of this Province.

43. Vesting effect of assignment.—Every assignment hereafter executed for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Act, and whether the debtor has or has not included all his real and personal estate, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act and the provisions of this Act shall apply to the assignee named in such assignment.

44. Assignee's accounts.—Upon the expiration of one month from the date of assignment, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of such estate.

45. Dividends.—From time to time, whenever there is sufficient money on hand for that purpose, the assignee shall declare and pay a dividend of ten per cent. or more on the claims of creditors. Before any dividend is paid, a dividend sheet shall be prepared, showing all claims allowed and all claims (if any) objected to, and showing an abstract of receipts and disbursements, and such dividend sheet shall be certified to by the assignee and the Inspectors (if any).

46. Interest.—All sums received by the assignee for interest on moneys belonging to the estate shall belong to the estate.

47. Debtor to give information to assignee.—(1) The debtor shall give such information to the assignee or Inspectors respect-

ing his estate and affairs, attend at such times on the assignee or Inspectors and at such meetings of his creditors, execute at the expense of the estate such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and to the distribution of the proceeds thereof amongst his creditors as are reasonably required by the assignee or Inspectors; and he shall aid, to the utmost of his power, in the realisation of his property and the distribution of the proceeds thereof among his creditors.

(2) **Compensation to debtor for his services.**—The assignee may from time to time, with the consent of the creditors, make such all allowance as he thinks just to the debtor out of the estate or compensation for his services in connection with the winding up of his estate.

48. Examination of debtor.—The creditors or the Inspectors may direct the debtor to be examined upon oath before the assignee, or before such Judge of the Supreme or County Court as they may name, touching his estate and effects, assets and liabilities, the conduct and management of his business, the causes of his insolvency, and his affairs generally; and such assignee or Judge may administer any necessary oath.

(2) **Time, place and adjournment of examination.**—Such examination shall take place at such time and place as is appointed by the Judge on application by the creditors, or by the Inspectors, and it may be adjourned from time to time; but a Judge of the Supreme or County Court may, on the application of any person interested, and on being satisfied that the affairs of the debtor have been sufficiently investigated, make an order directing that the examination be concluded by such time as is named in the order.

(3) **Examination may be by counsel.**—Such examination may be conducted by counsel or by such persons as are appointed by the creditors or Inspectors, and notes of the evidence given at such examination, which may be taken in shorthand, shall be deposited with the assignee and shall be open to inspection, without charge, by any creditor or by the duly authorised representatives of any creditor.

(4) **Committing debtor for refusing to appear or to answer questions.**—In case the debtor neglects or refuses to appear or to be sworn, or to answer any proper question, a Judge of the Supreme or County Court may, on the application of the assignee or of any person interested, order that the debtor be committed as for a contempt of court, and may make such order as to the payment of the costs of any application under this section as to him seems right.

49. Examination of persons other than debtor touching estate.—(1) A Judge of the Supreme or County Court may, on the application of the assignee, or of a creditor having an unsecured claim of one hundred dollars or upwards, summon before him any person, including the husband or wife of the debtor, known or suspected to have in his possession any of the estate or effects of the debtor, or any person who is represented to such Judge as capable of giving information concerning the debtor, his dealings or property, and such Judge may require any such person to produce any documents in his custody or power, or under his control, relating to the debtor, his dealings or property.

(2) Apprehension of such persons refusing to attend.—

If the person so summoned, after having been tendered the ordinary witness fees allowed in suits before the Court, without reasonable excuse refuses to come before the Judge at the time appointed, the Judge may, by warrant, cause him to be apprehended and brought before him.

(3) Procedure upon such examination.—

Such person may be examined upon oath concerning the debtor, his dealings or property, by or before the Judge, or by or before such person and in such manner as the Judge directs, and such Judge or person may administer any necessary oath; and notes of the evidence given at any such examination, which may be taken in shorthand, shall be deposited with the assignee and shall be open to inspection, without charge, by any creditor, or the duly authorised representative of any creditor; and the Judge may make such order as to the payment of the costs of any such examination as to him seems right.

(4) Ordering such persons to deliver up property belonging to estate.—If on such examination such person admits that he has in his possession any property belonging to the debtor, and to which the assignee is legally entitled, the Judge may order him to deliver to the assignee such property, or any part thereof, at such time, in such manner, and on such terms as seems just.

(5) Committing such persons for contempt.—In case of refusal to appear, or to be sworn, or to answer any questions that may lawfully be asked touching the debtor, his dealings or property, or to produce any document which he is required to produce, or to obey any order of the Judge made under and by virtue of this section, the person so refusing may be committed as for a contempt of court.

50. Arrest of debtor.—A Judge of the Supreme or County Court may at any time after the execution of an assignment under this Act, on the application of the assignee or any creditor having a claim for one hundred dollars or more against the assignor, by warrant to the Sheriff of the county, or other proper officer, cause the debtor to be arrested, and any books, papers, moneys, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Judge orders, if such facts and circumstances are shown by affidavit as satisfy the Judge—

(a) **Affidavit leading to order for arrest.—**That there is good and probable cause for believing that the debtor is about to abscond and conceal himself to avoid appearance at any meeting of his creditors at which he is required to appear, or to avoid examination in respect of his affairs, or otherwise to avoid, delay, or embarrass any proceedings against him under this Act; or

(b) That there is good and probable cause for believing that he is about to remove his goods with intent to prevent or delay possession being taken of them by the assignee, or that he has concealed or destroyed, or is about to conceal or destroy, any of his goods or money, or any books, documents, or writing which might be of use to his creditors in the course of the proceedings under this Act; or

(c) That without good cause shown, he has failed to attend any meeting or examination which he was required to attend under the provisions of this Act.

51. Recission of contracts in fraud of creditors.—Where there is any assignment under this Act the assignee, save as herein otherwise provided or implied, shall have an exclusive right of suing

for the rescission of agreements, deeds and instruments, or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this or any other Act.

52. When and how creditors authorised to sue.— If at any time any creditor desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee refuses or neglects to take such proceedings after being duly required so to do, such creditor so desiring shall have the right to obtain an order of the Judge aforesaid authorising him to take such proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from such proceedings shall belong exclusively to the creditor instituting the same for his benefit; but if before such order is granted the assignee shall signify to the Judge his readiness to institute such proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from such proceedings, if instituted within such time, shall appertain to the estate.

53. Disposal of estate.— The creditors may at any meeting pass any resolution or order directing the assignee how to dispose of the estate, or any part thereof, and in default of their so doing he shall, subject to the directions, order and instructions he may from time to time receive from the Inspectors (if any) with regard to the mode, terms and conditions on which he may dispose of the whole or any part of the estate, sell and dispose of the same in such manner as seems to him most advantageous in the interests of the estate, subject always to the provisions of this Act; but the assignee, or any Inspector or the Solicitor of the estate, shall not purchase, directly or indirectly, any part of the stock in trade, debts or any assets of any description of the estate.

54. Leases.— (1) If the debtor, at the date of the assignment, is a tenant of property, the assignee shall, notwithstanding any condition, covenant or agreement that such tenancy shall determine in case of the bankruptcy or insolvency of the tenant, have the right to hold and retain such property for a period not exceeding three months from the date of the assignment, or until the expiration of the tenancy, whichever shall first happen, on the same terms and conditions as the debtor might have held such property had no assignment been made.

(2) If the debtor, at the date of the assignment, is a tenant of property, the tenancy of which is not determined by his insolvency, the assignee, under the authority of the creditors, may give notice in writing to the lessor of his wish to determine the same at the expiration of three months from the giving of such notice, and such tenancy shall terminate at the expiration of such three months; but nothing herein shall prevent the assignee, under the authority of the creditors, from selling, transferring or otherwise disposing of any lease or leasehold premises, or any interest of the debtor therein, for the unexpired term thereof, or any part thereof, to as full an extent, as could have been done by the debtor had an assignment not been made; and if there is any covenant, condition or agreement that the lessee or his assigns should not assign or sub-let the property without the leave or consent of the lessor, or other person, such covenant, condition or agreement shall be of no effect in case of such sale, transfer, sub-lease or disposition of the lease or leasehold

property as aforesaid, if a Judge of the Supreme Court, on the application of the assignee, and after notice of such application to the lessor or other person whose leave or consent is required, approve of the sale, transfer, sub-lease, or disposition so made of the lease or leasehold property.

(3) The lessor may, in the event of the tenancy being determined by the assignee by notice in manner hereinbefore provided, file a claim against the debtor's estate for the damages (if any) sustained in consequence of such termination, which claim shall be proved in a similar manner to ordinary claims against the estate; and in his proof of claim he shall set forth the amount of damages claimed and how such amount is arrived at; and any such claim may be objected to in the same manner as herein provided in regard to claims made against the estate; and the lessor, on his claim being established or allowed, shall have all the rights of voting and otherwise enjoyed by ordinary unsecured creditors who have proved claims against the estate.

(4) In estimating such damages, regard shall be had to the rental payable under the tenancy so determined, and to the yearly value of the property at the time of such termination, and regard shall also be had to the additional value given to the property by any buildings, fixtures, or improvements placed thereon by the debtor, or those through whom he claims, but no regard shall be had to the chance of leasing the property at a greater or less rent than that payable by the debtor or his estate at the time of the termination of the tenancy.

(5) The lessor shall have a privileged claim against the estate of the debtor for arrears of rent due or accruing due in respect of the six months next preceding the date of the assignment, together with all costs of distraint properly made before the date of assignment in respect to the rent or any part of the rent hereby made a privileged claim, but for all other arrears of rent he shall have a claim provable against the estate as an ordinary creditor. He shall also have a privileged claim against the estate for all rent accruing due after the date of assignment during the period the property and premises are held by the assignee.

(6) The lessor shall not be entitled to distrain upon the goods of the assignee after they become vested in the assignee, and all goods then distrained upon shall, on demand, be delivered by the person holding them to the assignee, but the lessor shall not by reason of such delivery be deprived of any lien or rights in reference to such goods which he may have acquired by such distress, should the goods be claimed by and be delivered to any person other than the assignee.

(7) The lessor shall not be entitled to any further or other rent from the debtor or from his estate than as set forth in this section.

55. Disclaimer of liability for shares, stocks, etc.—(1) When any part of the property of the debtor consists of shares or stock in companies or unprofitable contracts, or of any other property that is not saleable or readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of a sum of money, the assignee may, with the authority of the creditors, by writing under his hand, disclaim such property at any time within six months from the date of his appointment, notwithstanding that he has endeavoured to sell, or has taken possession of such property, or has exercised any act of ownership in rela-

tion thereto: Provided that when any such property has not come to the knowledge of such assignee within six months after his appointment he may disclaim such property at any time within six months after he first became aware thereof.

(2) Such disclaimer shall operate to determine, as from the date thereof, the rights, interests, and liabilities of the debtor and his property in or in respect of the property disclaimed, and shall also discharge the assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the debtor and his property and the assignee from liability, affect the rights or liabilities of any other person.

(3) The assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the assignee, by any person interested in the property, requiring him to decide whether he will disclaim or not, and the assignee has, for a period of one month after the receipt of such application, or such extended period as may be allowed by a Judge of the Supreme Court, declined or neglected to give notice whether he disclaims the property or not; and in the case of a contract, if the assignee, after such application as aforesaid, does not, within the said period or extended period, disclaim the contract, he shall be deemed to have adopted it.

(4) A Judge of the Supreme Court may, on the application of any person who is, as against the assignee, entitled to the benefit or subject to the burden of a contract made with the debtor, make an order rescinding the contract, on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Judge may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt provable under this Act against the estate of the debtor.

(5) A Judge of the Supreme Court may, on application by any person either claiming an interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Judge thinks just; and on any such vesting order being made the property comprised therein shall vest accordingly in the person named therein in that behalf without any conveyance or assignment for the purpose.

(6) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the debtor to the extent of the injury, and may prove the same as a debt provable under this Act against the estate of the debtor.

(7) The provisions of this section shall not extend to leases or leasehold property.

56. Dividends at time of discharge of assignee.— All dividends remaining unclaimed at the time of the discharge of the assignee shall be paid over to the Minister of Finance, and if afterwards claimed shall be paid over to the person entitled thereto.

57. Balance of estate after payment of claims.—If any balance remains of the estate of the debtor, or of the proceeds there-

of, after the payment in full of all his debts and liabilities and the costs of winding up his estate, such balance shall be paid or transferred to the debtor.

58. Discharge of assignee.—After the declaration of the final dividend the assignee shall prepare his final account and make application to a Judge of the Supreme Court for his discharge, giving at least ten days' previous notice of such application to the debtor, and to the inspectors (if any) and to the creditors by circular; and he shall produce and file, on such application, a bank certificate of the deposit of any dividends remaining unclaimed, and of any balance in his hands, and also a statement under oath, showing the nominal and realised value of the assets of the insolvent, the amount of claims proved, dividing them into classes according to the nature thereof, the amount and rate upon the dollar of dividends paid to the creditors, and the entire expense of winding up the estate. The Judge may, after causing the accounts of the assignee to be audited by the inspectors, or by such creditor, or by such competent person as he may name, and after hearing all parties interested, grant, conditionally or unconditionally, the application for discharge or refuse it, and may make any order as to costs which he thinks proper.

59. Retention by debtor of any portion of estate after assignment.—If after the date of the assignment the debtor retains or receives any portion of his estate or effects, or of any moneys, securities for money, business papers, documents, books of account or evidences of debt, belonging or appertaining to his business or estate, and retains and withholds the same from the assignee, without lawful right, the assignee may apply to a Judge of the Supreme or County Court for an order for the delivery thereof to him, and in default of delivery in conformity with such order the debtor may be imprisoned in the common jail until the same are delivered, or for such time, not exceeding one year, as the Judge may order; but nothing herein shall interfere with or diminish any other penalty to which, under this Act, he may be subject in consequence of the non-delivery of such property, effects, documents or money.

60. Time and place of creditors' meetings.—The creditors may, at any meeting, determine where subsequent meetings shall be held, but in default of their so doing all such meetings, after the first meeting, shall be held at the office or place of business of the assignee.

61. Procedure at creditors' meetings.—(1) At all meetings the creditors may appoint the chairman, and in default of such appointment the assignee shall be chairman.

(2) The chairman shall decide all disputes or questions that may be raised at such meetings as to the eligibility of a creditor to vote or as to the amount on which he should vote, or any other question of procedure at such meetings.

(3) The chairman shall cause to be kept full minutes of all proceedings, resolutions and decisions at such meetings, and shall include therein an accurate list of the creditors present or represented, which minutes shall be signed by him and shall be filed with and kept by the assignee and on the final discharge of the assignee, shall be deposited with the District Registrar of the Supreme Court as ordered by the Judge granting such discharge.

62. Voting.—(1) A creditor shall be entitled to vote at any meeting of creditors in respect of and to the extent of his claim against the estate as determined by this Act, but such creditor shall not be entitled to vote at any meeting of creditors until he has proved his claim in manner hereinbefore provided, and if his claim is dependent upon a condition or contingency, or for other reason does not bear a certain value, not until the value of such claim has been ascertained in manner hereinbefore provided.

(2) In the case of contested claims, the creditor shall, until such contestation is decided or an agreement between such creditor and the assignee is arrived at, be considered as a creditor for the amount admitted by the assignee (if any).

(3) Persons purchasing claims against the estate after the date of assignment shall not be entitled to vote in respect of such claims, but shall in all other respects, unless otherwise specially provided, have the same rights as other creditors.

(4) The assignee, his partner, agent, clerk or employee, or any person in the employ of a partnership or company of which he is a member, shall not be entitled to vote upon any resolution affecting the remuneration or removal from office or the conduct of the assignee, or the security to be given by him, but on all other questions, if creditors, they may vote as such creditors.

63. Proxies.—Except as herein otherwise provided, no creditor shall vote at any meeting unless present personally or represented by some person having written authority, which may be by power of attorney, letter, post card, or telegraphic message, such authority to be filed with the assignee. Such authority may be either general or limited, but in no case shall the assignee, his partner or any one in his employ, or in the employ of a partnership or company of which he is a member, act for or represent any creditor of the estate.

64. Assignee subject to summary jurisdiction of Court.—Every assignee shall be subject to the summary jurisdiction of the Supreme or County Court in the same manner and to the same extent as the ordinary officers of the Court are subject to its jurisdiction, and the Court may compel him to perform his duties, or may restrain him from taking or continuing proceedings which are not in the interest of the estate or of the creditors generally, and obedience by the assignee to any order of the Court may be enforced by the Court under the penalty of imprisonment as for contempt of Court, and by removal from his office.

65. Application to Judge to rescind resolution passed at creditors' meeting.—Any one or more creditors whose claims in the aggregate exceed ten per cent. in value of all claims ranking against the estate, who are entitled to vote, and who are dissatisfied with any resolution adopted, or orders made by the creditors or the inspectors, or with any action of the assignee for the disposal of the estate, or any part thereof, or for postponing the disposal of the estate, or any part thereof, or for the disposal of the same, or with reference to any matter connected with the management or the winding up of an estate, or with any decision of the chairman of a meeting, may, within two days after the adoption of the resolution, or the making of the order or decision, or the performance of the action complained of, give to the assignee notice that he or they will apply to a Judge of the Supreme or County Court on the day and at the hour fixed in such notice, not being later than two days

after such notice has been given, or as soon thereafter as the parties may be heard before such Judge, to rescind such resolution or order or to reverse such decision, or for such order as is indicated in such notice, and the Judge after hearing the inspectors, the assignee and creditors present at the time and place so fixed, may approve of, rescind, or modify the said resolution or order, decision, or action, or make such order in the premises as to him seems proper. In case of the application not being proceeded with, or being refused, the parties appealing shall pay all costs occasioned thereby, otherwise the costs and the expenses shall be at the discretion of the Judge.

66. Delegation of power to Inspectors.—The creditors may generally or for a special occasion, delegate to the inspectors any of the powers conferred upon them by sections 30, sub-section (a), 38, 44 and 55, sub-section (2).

67. Reference to Judge for directions as to matters not provided for.—If any matter arises in connection with any assignment under this Act not provided for herein, such matter may be referred summarily to a Judge of the Supreme or County Court by the assignee, or the inspectors, or by any creditor for an amount of one hundred dollars or more, and upon such application such Judge may give such directions as to notifying other parties and as to other matters as he may think proper, and may make such order as he may think fit, including the costs of the application.

68. Security by assignee.—At any time after an assignment is executed, the debtor, the inspectors or any creditor for one hundred dollars or more, may apply to a Judge of the Supreme or County Court to fix the security to be given by the assignee for the faithful performance of his duties as such assignee, and for accounting for all moneys and property coming to his hands. If such order as is made by such Judge is not carried out by such assignee, such Judge may remove him and appoint some other person in his place, and such order appointing a new assignee may be registered as provided in section 25 for the registration of a resolution of creditors, and with the same effect.

69. This Act not to interfere with insolvency laws.—This Act is not intended to interfere with the insolvency laws which may from time to time be in force in this Province, but this Act is intended to be subject to such laws.

70. Repeal.—Chapter 11 of the Revised Statutes, 1897, being the "Creditors' Trust Deeds Act," and Acts amending the same, are hereby repealed.

71. Commencement.—This Act shall not come into force until proclaimed by the Lieutenant-Governor in Council.

72. The registration of an assignment under the provisions of section 14, and of a copy of a resolution of creditors under the provisions of section 25, shall be affected by filing said documents in the respective offices mentioned in said sections. (Added by 2 Edw. VII., c. 18, s. 4.)

73. For the registration of an assignment in a Land Registry office or Land Titles office, there shall be charged a fee of two dollars, and for the registration under section 25 of a copy of the resolution of creditors requiring the assignee to transfer the estate, there shall be charged a fee of two dollars. (Added by 2 Edw. VII., c. 18, s. 4.)

NORTHWEST TERRITORIES

NOTE.—The two following ordinances are repealed in Alberta and Saskatchewan.

C. O. N. W. T., 1898. CHAP. 42.

AN ORDINANCE RESPECTING PREFERENTIAL ASSIGNMENTS.

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories enacts as follows:

1. Fraudulent and preferential assignments.—Every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bonds, bills, notes, securities or of shares, dividends, premiums or bonus in any bank, company or corporation made by any person at any time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency with intent to defeat or delay or prejudice his creditors or to give to any one or more of them a preference over his other creditors or over any one or more of them or which has such effect shall as against them be utterly void. C. O. 42, s. 1.

2. Pressure.—Every such gift, conveyance, assignment, transfer, delivery over or payment whether made owing to pressure or partly owing to pressure, or not, which has the effect of defeating, delaying or prejudicing creditors or giving one or more of them a preference shall as against the other creditors of such debtor be utterly void. C. O. 42, s. 2.

3. Assignments for creditors and "bona fide" transactions.—Nothing in this Ordinance shall apply to any deed of assignment made and executed by a debtor for the purpose of paying and satisfying ratably and proportionately and without preference or priority all the creditors of such debtor, their just debts or any *bona fide* sale of goods or payment made in the ordinary course of trade or calling to innocent purchasers or parties. C. O. 41, s. 3.

ORDINANCES OF N. W. T., 1900, CHAP. 11.

AN ORDINANCE RESPECTING ASSIGNMENTS FOR THE GENERAL BENEFIT OF CREDITORS.

[Assented to May 4, 1900.]

The Lieutenant Governor by and with the advice and consent of the Legislative Assembly of the Territories enacts as follows:

1. Assignment to be made to resident of judicial district.—No assignment for the general benefit of creditors shall be valid or effectual as a transfer, assignment or conveyance of the property therein mentioned and described unless such assignment is made to some person or persons residing in the judicial district within which the assignor resides or carries on business. 1900 c. 11, s. 1. (a).

ALBERTA AND SASKATCHEWAN.

The foregoing ordinances respecting Preferential assignments and respecting assignments for the General Benefit of Creditors were repealed by the Statutes of Saskatchewan, 1906, chap. 25, and by the Statutes of Alberta, 1907, chap. 6. The two last mentioned statutes are identical in so many respects that it seems more convenient to print them together and to indicate any differences as they occur. After sec. 37, there is a slight difference in the section numbering. ..

STATUTES OF SASKATCHEWAN 1906.

Chap. 6.

STATUTES OF ALBERTA, 1907.

Chap. 25.

AN ACT RESPECTING ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS.

Saskatchewan. [*Assented to May 26, 1906.*]

Alberta. [*Assented to March 15, 1907.*]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of [Saskatchewan or Alberta, as the case may be] enacts as follows:

SHORT TITLE.

1. **Short title.**—This Act may be cited as "*The Assignments Act.*"

OFFICIAL ASSIGNEES.

2. **Appointment of official assignee.**—The Lieutenant Governor in Council may appoint one person in each judicial district of this province to be an official assignee under this Act.

3. **Security to be given by official assignee.**—No official assignee shall accept any assignment or trust or execute any duties under this Act unless and until he has given security to the satisfaction of the Lieutenant Governor in Council by bond or bonds or otherwise to His Majesty, his heirs and successors in the sum of ten thousand dollars for the due accounting and payment over of all moneys received by him as such assignee.

4. **Expense of furnishing bond.**—An official assignee may charge up to each estate which comes into his hands the sum of five dollars to reimburse himself the expense incident to the furnishing of said bonds.

ASSIGNMENTS.

5. **General assignment not in accordance with Act when void.**—Every assignment for the general benefit of creditors which is not void under any of the sections of this Act numbered from [Saskatchewan—thirty-eight to forty-two; Alberta—thirty-nine to forty-three] inclusive of both such numbers, but is not made to an official assignee nor to some other person resident of the province

with the consent of the proportion of creditors prescribed by the [Saskatchewan—forty-fourth; Alberta—forty-fifth] section of this Act shall be absolutely null and void to all intents and purposes.

6. Form of assignment for general benefit of creditors.—Every assignment made under this Act for the general benefit of creditors shall as to the description of the property comprised therein be valid and sufficient if such description is in the words following, that is to say: "All my personal property and all my real estate, credits and effects which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits and effects whether vested or contingent belonging at the time of the assignment to the assignor except such as gal proceedings, subject, however, as regards lands to the provisions as by law exempt from seizure or sale under execution or other le-
of The Land Titles Act.

7. All assignments for general benefit of creditors to be subject to this Act.—Every assignment hereafter executed in accordance with this Act for the general benefit of creditors whether the assignment is or is not expressed to be made under or in pursuance of this Act and whether the debtor has or has not included all his real and personal estate shall vest the estate whether real or personal or partly real and partly personal thereby assigned in the assignee therein named for the general benefit of creditors; and such assignment and the property thereby assigned shall be subject to all the provisions of this Act and the provisions of this Act shall apply to the assignee named in such assignment.

8. Assignments to take precedence of judgments, executions, etc.—An assignment for the general benefit of creditors under this Act shall take precedence of all attachments of debts by way of garnishment where the money has not been actually paid over to the garnishing creditor as well as of all other attachments and of all judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution or attaching creditors for their costs.

9. Sheriff to hand over property seized.—In case a deed of assignment as aforesaid has been duly executed and registered the sheriff having seized property of the assignor under execution or attachment shall upon receiving a copy of the assignment duly certified by the clerk of the registration district for mortgages and other transfers of personal property in whose office it is registered or verified by affidavit forthwith deliver to the assignee all the estate and effects of the execution debtor in his hands upon payment by the assignee to the sheriff of his fees and charges and the costs of the execution creditor or creditors who has or have a lien as above provided. [Saskatchewan:—if the sheriff has sold the debtor's estate or any part thereof he shall deliver to the assignee the money so realised by him less his fees and the said execution creditor's costs; the assignee shall have the same power to enforce a return and the same remedies for failure or neglect to return that are possessed by an execution creditor.]

10. Amendment of assignment by judge.—No advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected; and any such mistake, defect or imperfection shall be amended by any judge; such amendment may be made on application of the assignee or of any

creditor of the assignor on such notice being given to other parties concerned as the judge shall think reasonable; and the amendment when made shall have relation back to the date of the assignment, but so as not to prejudice the rights of innocent purchasers.

11. Notice of assignment to be published.—No assignment made for the general benefit of creditors under this Act shall be within the operation of *The Bills of Sale Ordinance*, but a notice of the assignment shall as soon as conveniently possible be published at least once in *The Alberta Gazette* [Saskatchewan] and not less than twice in at least one newspaper having a general circulation in the judicial district [Saskatchewan:—or sub-judicial district] in which the property assigned is situate.

12. Assignment to be registered.—A duplicate original or copy of every such assignment shall also within ten days from the execution thereof be registered (together with an affidavit of a witness thereto of the due execution of such duplicate original or of the assignment of which the copy filed purports to be a copy) in the office of the clerk of the registration district for mortgages and other transfers of personal property, where the assignor if a resident in [Saskatchewan] Alberta resides at the time of the execution thereof, or if he is not a resident then in the office of the clerk of the said registration district where the personal property so assigned is or where the principal part thereof (in case the assignment includes property in more registration districts than one) is at the time of the execution of such assignment; and such clerks shall file all such instruments presented to them respectively for that purpose, and shall indorse thereon the time of receiving the same in their respective offices and the same shall be kept there for the inspection of all persons interested therein. The said clerks respectively shall number and enter such assignments and be entitled to the same fees for services in the same manner as if such assignments had been registered under *The Bills of Sale Ordinance*.

(2) A duplicate original or copy certified by the clerk of the court shall within fifteen days also be filed in the land titles office for the land registration district in which any land vested by this Act in the assignee is situated.

13. Penalty for neglecting publication or registration.—If the said notice is not published in the regular number of *The (Saskatchewan) Alberta Gazette*, and in such newspaper as aforesaid within ten days from the execution of the assignment by the assignor or if the assignment is not registered as aforesaid within ten days from the execution thereof the assignor shall be liable to a penalty of twenty-five dollars for each and every day that shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published; and a like penalty for each and every day which shall pass after the expiration of ten days from the execution of the assignment by the assignor until the same shall have been registered.

(a) The assignee shall be subject to a like penalty for any such delay for each and every day which shall pass after the expiration of ten days from the delivery of assignment to him or of ten days after his assent thereto. The burden of proving the time of such delivery or assent shall be upon the assignee.

(b) Such penalties may be recovered with costs by action [Saskatchewan:—in any court of record in this province; Alberta:—in the court having jurisdiction to the amount of any penalty sought to be recovered] and one-half of the penalty shall go to the party suing and the other half for the benefit of the estate of the assignor.

(c) **Liability of official assignee.**—In case of an assignment to an official assignee he shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment a reasonable time before the time required for so advertising and registering nor shall he be compelled to act under the assignment until his costs in that behalf are paid or tendered to him.

14. Compelling publication and registration.—In case the assignment is not registered and notice thereof published within the time hereinbefore prescribed an application may be made by any one interested in the assignment to a judge to compel the registration of the assignment and publication of such notice; and the judge shall make his order in that behalf and with or without costs or upon the payment of costs by such person as he may in his discretion direct to pay the same.

15. Assignment not invalidated by omission to publish, etc.—The omission to publish or register as aforesaid or any irregularity in the publication or registration shall not invalidate the assignment.

CREDITORS' ASSIGNEE.

16. Appointment of substituted assignee.—A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards may at their discretion substitute some other person resident within the province for an assignee to whom an assignment has been made [Alberta:—and in case an assignee has died a new assignee may in a like manner be appointed by the creditors.]

Alberta: (2) An assignee may be removed and another substituted or a new assignee appointed by order of the court upon application for that purpose.

17. Rights and duties of the substituted assignee.—Where a new assignee is substituted or appointed as in the last preceding section provided the estate shall forthwith vest in the new assignee without a conveyance or transfer, and he shall register an affidavit of his appointment in the office in which the original assignment was filed; such an affidavit may also be filed under *The Land Titles Act*, and such registration or filing shall have the same effect as the registration of a conveyance or transfer.

MEETINGS OF CREDITORS.

18. Assignee to call meeting of creditors.—It shall be the duty of the assignee immediately to inform himself by reference to the debtor and his records of account of the names and residences of the debtor's creditors and within five days from the date of assignment to convene a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held in his office or some other convenient place to be named in the notices not later than twelve days after the mailing of such notice; and he shall also publish such notice by advertisement in *The [Saskatchewan] Alberta Gazette* in the first issue after the expiration of such period of five days.

19. Meeting of creditors by request of majority thereof.—In case of a request in writing signed by a majority of the credit-

ors having claims duly proved of one dollar and upwards computed according to the provisions of the twenty-second section of this Act, it shall be the duty of the assignee within two days after receiving such request to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default the assignee shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called.

20. Judge to give directions in case creditors do not attend.—In case a sufficient number of creditors do not attend the meeting mentioned in the last preceding section, or fail to give directions with reference to the disposal of the estate any judge may give all necessary directions in that behalf.

21. Voting at meeting.—At any meeting of creditors the creditors may vote in person or by proxy authorized in writing; but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature thereof.

22. Sale of vote.—Subject to the provisions of the sixteenth and twentieth sections hereof all questions discussed at meetings of creditors shall be decided by the majority of votes and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over one hundred dollars and less than two hundred dollars, one vote;

For every claim of or over two hundred dollars and less than five hundred dollars, two votes;

For every claim of or over five hundred dollars and less than one thousand dollars three votes;

For every additional one thousand dollars or fraction thereof, one vote.

(a) **Upon claims acquired after assignment.**—No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(b) **Casting vote.**—In case of a tie the assignee shall have a casting vote.

CREDITORS' CLAIMS.

23. Proof of claim.—Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

24. Limiting time for proof of claim.—In case a person claiming to be entitled to rank on the estate assigned does not within a reasonable time after receiving notice of the assignment and of the name and address of the assignee furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections of this Act, a judge may upon a summary application by the assignee or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that unless the claim be proved to the satisfaction of the judge within a time to be limited by the order the person so making default shall no longer be deemed a creditor of the estate assigned and shall be wholly barred of any right to share in the proceeds thereof; and if the claim is not so proved within

the time so limited or within such further time as the said judge may by subsequent order allow, the same shall be wholly barred and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor.

25. Creditor may prove claim not due.—A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due.

26. Set-off.—The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor in the same manner and to the same extent as if the assignor were plaintiff or defendant as the case may be.

27. How claims are to rank where different estates.—If any assignor or assignors executing an assignment under this Act for the general benefit of his or their creditors owes or owe debts both individually and as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.

28. Workmen's wages not exceeding three months privileged claims under assignment for benefit of creditors.—Provisions applicable to all wages.—In case of an assignment under this Act the assignee shall pay in priority to the claims of the ordinary or general creditors of the person making the same the wages or salary of all persons in the employ of such person at the time of the making of such assignment or within one month before the making thereof, not exceeding three months' wages or salary, such wages or salary to be for arrears only and not for any unearned portion; and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims for arrears of such wages or salary; the provisions of this section shall apply to wages or salary whether the employment in respect of which the same may be payable by the day, week, month or year.

Alberta:—(2) When wages to be payable on distribution of estate by assignee, administrator, etc.—The wages in respect of which priority is herein conferred shall become due and be payable by the assignee within one month from the time when the estate which is being wound up or distributed shall have been received by or placed under the control of such assignee unless it shall appear to him that the said estate is not of sufficient value to pay the ordinary expenses and disbursements of winding up and distributing the said estate; but, such ordinary expenses shall not include the cost of litigation or other unusual expenses concerning the estate or any part thereof, unless the persons entitled to the said preferential claim for wages shall have consented in writing to such proceedings being taken before they were commenced or shall afterwards have adopted or ratified in writing such proceedings.

29. Creditors to value securities.—Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor or on the estate of a third party for whom such debtor is only secondarily liable he shall put a specified value thereon; and the assignee under the authority of the creditors may either

consent to the right of the creditor to rank for the claim after deducting such valuation or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

30. Right to revalue in certain cases.—If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the last preceding section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its nonpayment he shall be entitled to amend and revalue his claim.

31. When creditor holding security fails to value the same.—In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof of such nature that he is required by this Act to value the same and he fails to value such security a judge may upon summary application by the assignee or by any other person interested in the debtor's estate of which application three days' notice shall be given to such claimant order that unless a specified value shall be placed on such security and notified in writing to the assignee within a time to be limited by the order such claimant shall in respect of the claim or the part thereof for which the security is held in case the security is held for part only of the claim be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security and notified in writing to the assignee according to the exigency of the said order or within such further time as the said judge may by subsequent order allow the said claim or the said part as the case may be shall be wholly barred as against such estate but without prejudice to the liability of the debtor therefor.

32. Contestation of claim.—At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of the contestation of the claim, or of any part thereof, may be served by the assignee, upon the claimant; within thirty days after the receipt of the notice, or such further time as a judge may on application allow, the claimant shall apply for and may if a judge sees fit obtain an originating summons to decide the validity of such claim under the practice regarding originating proceedings set forth in *The Judicature Ordinance* or of any Act hereafter passed or Rules of Court hereafter promulgated by competent authority in substitution for or amendment of *The Judicature Ordinance* or of the Rules of Court therein contained, and such summons shall be served on the assignee; and in default of such summons being served within the time aforesaid the claim or such part thereof as has been so contested shall be forever barred.

(a) **Service of process on solicitors.**—The notice by the assignee shall contain the name and place of business of a solicitor upon whom service of the summons may be made; and service upon such solicitor shall be deemed sufficient service of the summons.

33. Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.—In case the assignee

is satisfied with the proof adduced in support of a claim he shall notify the debtor of his decision with regard thereto within a reasonable time after coming to such decision, and if the debtor desires to dispute the claim or any part thereof, he shall notify the assignee in writing stating his grounds of dispute; and such notice shall be given within ten days of such debtor being notified in writing by the assignee that he is satisfied with the proof adduced as aforesaid and not afterwards unless by special leave of a judge.

(a) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to take proceedings to establish his claim he shall notify the debtor in writing of this fact and the debtor may thereupon and within ten days of his receiving such notice apply to a judge for an order requiring the assignee to serve a notice of contestation; the judge shall only make such order if after notice to the assignee the judge is of the opinion that there are good grounds for contesting the claim; in case the debtor does not make an application as aforesaid, the decision of the assignee shall as against him be final and conclusive (Saskatchewan:— as far as regards the distribution of the assigned estate.)

(b) If proceedings are brought by the claimant against the assignee the debtor may intervene either personally or by counsel for the purpose of contesting the claim.

DIVIDENDS.

34. Dividends when to be paid.—As large a dividend as can with safety be paid shall be paid by every assignee under this Act within six months from the date of any assignment made hereunder and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months and more frequently if required by the inspectors, until the estate is wound up and disposed of.

35. Notice of dividend sheet.—So soon as a dividend sheet is prepared, notice thereof shall be given by letter posted to each creditor enclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the day of mailing such notice, abstract and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid.

ADMINISTRATION OF ESTATE.

36. Assets not to be removed out of the province, and moneys to be deposited in a bank.—No property or assets of an estate assigned under the provisions of this Act shall be removed out of the province without the order of a judge; and the proceeds of the sale of any such property or assets and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this province, and shall not be withdrawn or removed without the order of a judge except in payment of dividends and other charges incidental to the winding up of the estate, which shall include rent, wages, mortgages, secured and preferred and partly secured and preferred claims.

(a) **Penalty.**—Any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be

liable to a penalty of five hundred dollars, which may be recovered summarily with costs before the court, and one-half of the said penalty shall go to the person suing therefor, and the other half shall belong to the said estate; but in default of payment of the said penalty and all costs which may be incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be disqualified from acting as assignee of any estate while such default continues.

37. Accounts to be kept accessible.—Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare and keep constantly accessible to the creditors accounts and statements of his doings as such assignee and of the position of the estate.

FRAUDULENT OR PREFERENTIAL TRANSFERS.

Alta. 38. Confession or warrants to confess judgment given by insolvents to defeat or delay creditors or to give one preference over the other to be void.—Alberta:—In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment with intent, in giving such confession, *cognovit actionem* or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part or with intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem* or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution.

Sask. 38; Alta. 39. Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void.—Subject to the provisions of the [Saskatchewan:—forty-fourth, forty-fifth, forty-sixth, and forty-seventh; Alberta:—forty-fifth, forty-sixth, forty-seventh, and forty-eighth] sections of this Act every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation or of any other property real or personal made by a person at a time when he is in solvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency with intent to defeat, hinder, delay or prejudice his creditors or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be utterly void.

Sask. 39; Alta. 40. Transfer with intent to prefer creditors.—Subject to the provisions of the [Saskatchewan:—forty-fourth, forty-fifth, forty-sixth and forty-seventh; Alberta:—forty-fifth, forty-sixth, forty-seventh and forty-eighth] sections of this Act every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of

bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation or of any other property real or personal made by a person at a time when he is in insolvent circumstances or is unable to pay his debts in full or knows that he is on the eve of insolvency to or for a creditor with intent to give such creditor preference over his other creditors or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.

Sask. 40; Alta. 41. Transfer having effect of preference void if attacked within sixty days.—Subject to the provisions of the [Saskatchewan:—forty-fourth, forty-fifth, forty-sixth and forty-seventh; Alberta:—forty-fifth, forty-sixth, forty-seventh and forty-eighth] sections of this Act every gift conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bonds, notes or securities or of shares, dividends, premiums or bonus in any bank, company or corporation or of any other property real or personal, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors, of the debtor, or over any one or more of them, shall, in and with respect to any action or proceeding which within sixty days thereafter is brought, had or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced or postponed.

Sask. 41; Alta. 42. Or if assignment made within sixty days.—Subject to the provisions of the [Saskatchewan:—forty-fourth, forty-fifth, forty-sixth and forty-seventh; Alberta:—forty-fifth, forty-sixth, forty-seventh and forty-eighth] sections of this Act every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects or of bills, bond, notes or securities or shares; dividends, premiums, or bonus in any bank, company or corporation or of any other property real or personal made to or for a creditor by a person at any time when he is in insolvent circumstances or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be utterly void as against the assignee or any creditor authorized to take proceedings to avoid the same under the [Saskatchewan, forty-eighth; Alberta, forty-ninth] sections hereof.

Sask. 42; Alta. 43. What transactions to be deemed preferential.—Intent or motive immaterial.—Pressure or want of knowledge on part of creditor not to save the transaction.—A transaction shall be deemed to be one which has the effect of giving a creditor a preference over other creditors within the meaning of the two last preceding sections if by such transaction a creditor is given or realizes or is placed in a position to realize payment, satisfaction or security for the debtor's indebtedness to him or a portion thereof greater proportionately than could be realized by or for the unsecured creditors generally of such debtor or for the unsecured portion of his liabilities out of the assets of the debtor left available and subject to judgment, execution, attachment or other process; and such effect shall not be

deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid or of the effect of the transaction shall avail to protect the transaction except as provided by the [Saskatchewan:—forty-fourth and forty-seventh; Alberta:—forty-fifth and forty-eighth] sections hereof, but independent entirely of the intent with which the transaction was entered into the preferential effect or result of the transaction impeached shall govern.

Sask. 43; Alta. 44. "Creditor" for certain purposes to include surety and indorser.—When the word "creditor" or "creditors" occurs in any of the four last preceding sections, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said sections, and such word shall include a *cestui que trust* or other person to whom the liability is equitable only.

Sask. 44; Alta. 45. Assignments for benefit of creditors and "bona fides" sales, etc., protected.—Nothing in the last six preceding sections shall apply to any assignment made to an official assignee or with the consent of a majority of the creditors having claims of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act to any other person resident within the province for the purpose in each of the said cases of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind as above mentioned which is made in consideration of any present actual *bona fide* payment in money or by way of security for any present actual *bona fide* advance of money or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property:

Proviso.—Provided that the money paid or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration thereof.

Sask. 45; Alta. 46. Transfer to creditor of consideration for sale invalid.—In case of a valid sale of goods, securities or property and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer even though valid as respects the purchaser shall be void as respects the creditor to whom the same is made.

Sask. 46; Alta. 47. Security given up upon void payment to be returned.—In case a payment has been made which is void under this Act and any valuable security was given up in consideration of the payment the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment.

Sask. 47; Alta. 48. Payment of wages protected.—Exchange of securities protected.—Certain assignments to be valid.—Nothing herein contained shall affect the priority of a claim for wages or salary under the twenty-eighth section of this Act, or shall prevent a debtor providing for payment of wages or salary due by him in accordance with the provisions of the said section; nor shall anything herein contained affect any payment of money to a creditor where such creditor by reason or on account of such payment has lost or been deprived of, or has in good faith given up any valid security which he held for the payment of the debt so paid unless the value of the security is restored to the creditor nor the substitution in good faith of one security for another security for the same debt so far as the debtor's estate is not thereby lessened in value to the other creditors; nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where by reason or on account of the giving of the security an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and pay his debts in full.

Sask. 48; Alta. 49. Rights of action of assignee.—Except as is hereinafter otherwise provided the assignee shall have an exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors or made or entered into in violation of this Act.

(a) **Creditor may proceed in certain cases if assignee refuses.**—If at any time a creditor desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee under authority of the creditors or inspectors refuses or neglects to take such proceeding after being duly required so to do, the creditor shall have the right to obtain an order of a judge authorizing him to take the proceedings in the name of the assignee but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the judge may prescribe; and thereupon any benefit derived from the proceedings shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit; but if before such order is granted the assignee shall signify to the judge his readiness to institute the proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate.

Sask. 48 (b); Alta. 50. Creditors suing for rescission to void transactions for benefit of creditors generally.—Where there is no valid assignment for the benefit of creditors, one or more creditors may for the benefit of creditors generally or for the benefit of such creditors as have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments or other transactions made or entered into in fraud of creditors, or in violation of this Act or thereby declared void; and in case any amendment of the statement of claim be made the same shall relate back to the commencement of the action for the purpose of the time limited by the [Saskatchewan:—fortieth, Alberta:—forty-first] section hereof.

Sask. 48 (c.) In any action under this section the court may direct delivery of any property in question to the assignee or a sheriff or a receiver and may order a sale thereof and

such distribution of the proceeds as may seem equitable either through the assignee or through a sheriff or otherwise as may seem proper.

SASKATCHEWAN 48 (d.) In case of a transaction void under this Act as entered into with intent to give a preference on having the effect of giving a preference the subject matters shall not be seizable or attachable or liable to sale for the satisfaction according to priorities otherwise prevailing of judgments, executions attachments or other process; but the court shall have and exercise jurisdiction to realise the same for the benefit of all the creditors and to distribute the proceeds among them rateably and proportionately.

Sask. 49; Alta. 51. Following proceeds of property fraudulently transferred.—In the case of a gift, conveyance, assignment or transfer of any property real or personal which in law is invalid against creditors if the person to whom the gift, conveyance, assignment or transfer was made, shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the said debtor but, in case there is no such assignment shall exist in favour of all creditors of such debtor.

(a) **Taking proceeds under execution.**—Where there has been no valid assignment for the benefit of creditors and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable amongst creditors under *The Creditors' Relief Ordinance*.

(b) **Creditor suing on behalf of himself and other creditors.**—Where there has been no valid assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefor, or to recover the amount thereof by a creditor (whether a judgment creditor or not) on behalf of himself and all other creditors or such other proceedings may be taken as may be necessary to render the said proceeds or the amount thereof available for the general benefit of the creditors.

(c) **Protection of innocent purchasers.**—This section shall not apply as against innocent purchasers of any such property.

EXAMINATION OF ASSIGNORS AND OTHERS.

Sask. 50; Alta. 52. Examination of assignor or employees.—Where there has been an assignment for the benefit of creditors, the assignee upon resolution passed by a majority vote of the creditors present, or represented at a meeting of the creditors of the assignor, regularly called, or upon the written request or resolution of the majority of the inspectors of the estate may without an order examine the assignor or any person who is or has been an agent, clerk, servant, officer or employee of any kind of the assignor upon oath before any person authorized to hold examination for discovery under *The Judicature Ordinance* [Alberta:—or of any Act hereafter passed or Rules of Court hereafter promulgated by competent authority in substitution for or amendment of *The Judicature*

Ordinance or of the Rules of Court therein contained] or appointed for the purpose by a judge touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him.

Sask. 51; Alta. 53. Procedure upon examination of an assignor.—The rules and procedure from time to time in force in the court for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor.

Sask. 52; Alta. 54. When assignor does not attend or refuses to answer questions.—In case such assignor does not attend as required by any appointment or appointment and order, as the case may be, served on him, and does not allege a sufficient excuse for not attending, or if attending refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination of the assignor that such assignor has concealed or made away with any part of his property in order to defeat or defraud his creditors or any of them, any judge may on summary proceedings before him order the assignor to be committed to goal for any term not exceeding twelve months.

Sask. 53; Alta. 55. Service of appointment.—Any person liable to be examined under the [Saskatchewan:—fiftieth; Alberta:—fifty-second] section of this Act may be served with an appointment signed by the examiner mentioned in the [Saskatchewan:—fiftieth; Alberta:—fifty-second] section of this Act or a copy thereof, and where the examination is to take place under an order, also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination, and the person to be examined is to be paid the same fees as a witness.

Sask. 54; Alta. 56. Conduct of examination.—The examination under the [Saskatchewan:—fiftieth; Alberta:—fifty-second] section of this Act shall be conducted in the same manner as in the case of an oral examination of an opposite party in a suit or action.

Sask. 55; Alta. 57. Compelling attendance and production of books.—Any person liable to be examined under the [Saskatchewan:—fiftieth; Alberta:—fifty-second] section hereof may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the court.

Sask. 56; Alta. 58. Calling upon persons having information as to assignor's affairs to give evidence and produce documents, etc.—In case any person has or is believed or suspected to have in his possession or power any of the assignor's property, or any book, document or paper of any kind relating in whole or in part to the assignor, his dealings or property, such person may upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor (exclusive of such person if he is a creditor) or upon the written request or resolution of the majority of

the inspectors of the estate be required by the assignee to produce such books, documents or papers for the information of such assignee or to deliver over to him any such property of the debtor.

(a) **Examination of person failing to produce documents or to deliver property.**—In case such person fails to produce the said book, document or other paper, or to deliver over such property within four days of his being served with a copy of the said resolution and a request of the assignee in that behalf, or in case the assignee or the majority of the inspectors is not satisfied that full production or delivery has been made, the assignee may without an order examine the said person before any of the officers mentioned in the [Saskatchewan:—fiftieth; Alberta:—fifty-second] section of this Act, touching any such property or document or other paper which he is supposed to have received.

(b) **Enforcing attendance and production.**—Any such person may be compelled to attend and testify and to produce upon his examination any book, document or other paper which under this section he is liable to produce in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the court.

REMUNERATION OF ASSIGNEE AND INSPECTORS.

Sask. 57; Alta. 59. Remuneration of assignee.—The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors in case of the creditors failing to provide therefor subject to the review of a judge if complained of by the assignee or any of the creditors.

Sask. 58; Alta. 60. Where remuneration not fixed before the final dividend.—In case the remuneration of the assignee has not been fixed under the last preceding section before the final dividend, the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding five per cent. of the cash receipts, subject to review by a judge, as hereinbefore provided; but no application by the assignee to review the said allowance shall be entertained unless previous to the preparation of the final dividend sheet the question of his remuneration has been brought before a meeting of creditors competent to decide the same.

Sask. 59; Alta. 61. Remuneration of inspectors.—The assignee may pay or allow to each inspector appointed under this Act a reasonable charge or sum for the due performance of his duties as such inspector, but no such payment or allowance to an inspector in any estate shall exceed the sum of twenty-five dollars.

GENERAL.

Sask. 60; Alta. 62. Affidavits.—Any affidavit authorized or required under this Act may be sworn before any person authorized to administer oaths.

Alta. 63.—In this Act unless the context otherwise indicates:
1. The expression "Court" means the Supreme Court of Alberta in all cases except those in which the property assigned is of the value of \$400 or less, in which case "Court" means the District Court of the district in which the assignment is made;

2. The expression "judge" means a judge of such court or of such District Court respectively.

Sask. 61.—In this Act unless the Context indicates otherwise:

1. The expression "court" means the Superior Court of Record for the time being exercising jurisdiction in this province.

2. The expression "judge" means a judge of said court.

Sask. 62; Alta. 64. Act not to apply to assignments prior to Act.—Nor to actions commenced.—This Act shall not apply to any assignment executed before this Act comes into force or to any proceedings thereunder; nor shall the repeal mentioned in the following section affect any act done or any right or right of action existing, accruing or accrued or any action or proceeding commenced in a civil cause before such repeal takes effect, but such rights may be enforced and such action or proceeding continued as though this Act had not been passed.

Sask. 63; Alta. 65. Repeal.—Chapter 42 of *The Consolidated Ordinance 1898* and chapter 11 of the Ordinances of 1900 are hereby repealed.

Sask. 64.—This Act shall come into force on August 1st, 1906.

MANITOBA.

R. S. M., 1902, CHAP. 65.

AN ACT TO DECLARE THE TRUE CONSTRUCTION OF THE ACT PASSED IN THE THIRTEENTH YEAR OF THE REIGN OF QUEEN ELIZABETH AND CHAPTERED FIVE, AND INTITULED "AN ACT AGAINST FRAUDULENT DEEDS, ALIENATIONS, ETC."

APPLICATION OF ACT, 13 ELIZ., c. 5s. 1.

EXCEPTIONs. 2.

Preamble.—Whereas, by the first and second clauses of the Act passed in the thirteenth year of the reign of Her Majesty Queen Elizabeth, chaptered five, it is enacted as follows:—

13 Eliz., c. 5, ss. 1, 2.—For the avoiding and abolishing of "faigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions, as "well of lands and tenements as of goods and chattels, more commonly used and practised in these days than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions have been and are devised and contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder or defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, not only to the let or hindrance of the due course and ex-

"execution of law and justice, but also to the overthrow of all true and plain dealing, bargaining and chivisance between man and man, without the which no commonwealth or civil society can be maintained or continued; all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment and execution, at any time had or made since the beginning of the Queen's Majesty's reign, that now is, or at any time hereafter to be, had or made to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators, and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous or fraudulent devices and practices as is aforesaid, are, shall or might be in any wise disturbed, hindered, delayed or defrauded, to be clearly and utterly void, frustrate and of none effect, any pretence, colour, feigned consideration, expressing of use or any other matter or thing to the contrary notwithstanding;"

Preamble.—And whereas it is also by the sixth clause of the said Act provided and enacted as follows:—

13 Eliz. c. 5, s. 6.—“This Act, or any thing therein contained, shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate and interest is, or shall be, upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made, any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid, anything before mentioned to the contrary hereof notwithstanding;”

Preamble.—And whereas there are doubts as to the true construction of the said Act, and it is expedient to declare the true construction of the same; R.S.M., c. 61, Preamble.

Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

1. To what instruments said Act and clauses shall apply.—The said first and second clauses of the said Act apply to all instruments executed to the end, purpose and intent in the said clauses set forth, notwithstanding that the same may be executed upon a valuable consideration and with intention, as between the parties to the same, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same be protected under the said sixth clause of the said Act by reason of *bona fides* and want of notice or knowledge on the part of the purchaser. R.S.M., c. 61, s. 1.

2. Not to apply to instruments executed before April 20th, 1885.—This Act shall not apply to any instrument executed before the twentieth day of April in the year one thousand eight hundred and eighty-five. R.S.M., c. 61, s. 2.

R. S. M., 1902, CHAP. 8.

AN ACT RESPECTING ASSIGNMENTS AND PREFERENCES BY
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EXAMINATION OF ASSIGNOR AND OTHERSss. 50-56.

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His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as "The Assignments Act." 1 and 2 Ed. VII., c. 2, s. 42.

*** OFFICIAL ASSIGNEES.**

2. Appointment of official assignees.—The Lieutenant Governor in Council may appoint one person in each judicial district of this Province to be an official assignee under this Act. 1 and 2 Ed. VII., c. 2, s. 1.

3. Security to be given by official assignee.—No official assignee shall accept any assignment or trust, or execute any duties under this Act, unless and until he has given security to the satisfaction of the Lieutenant Governor in Council, by bond or bonds or otherwise, to His Majesty, His heirs and successors, in the sum of ten thousand dollars for the due accounting and payment over of all moneys received by him as such assignee. 1 and 2 Ed. VII., c. 2, s. 40.

4. Expense of furnishing bond.—An official assignee may charge up to each estate which comes into his hands the sum of five dollars to re-imburse himself the expense incident to the furnishing of said bonds. 1 and 2 Ed. VII., c. 2, s. 41.

ASSIGNMENTS.

5. General assignment not in accordance with Act, when void.—Every assignment for the general benefit of creditors which is not void under any of the sections of this Act numbered from thirty-eight, to forty-two, inclusive of both such numbers, but is not made to an official assignee, nor to any other person with the consent of the proportion of creditors prescribed by the forty-fourth section of this Act, shall be absolutely null and void to all intents and purposes. 1 and 2 Ed. VII., c. 2, s. 3, s-s. 3.

6. Form of assignment for general benefit of creditors.—Every assignment made under this Act for the general benefit of creditors shall be valid and sufficient if it is in the words following, that is to say:—"All my personal property and all my real estate, credits and effects, which may be seized and sold under execution," or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution or other legal proceedings, subject, however, as regards lands, to the provisions of "The Registry Act" and "The Real Property Act" as to the registration of the assignment. 1 and 2 Ed. VII., c. 2, s. 5.

7. All assignments for general benefit of creditors to be subject to this Act.—Every assignment hereafter executed in accordance with this Act, for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Act, and whether the debtor has or has not included all his real and personal estate, shall vest the estate, whether real or personal or partly real and partly personal thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Act, and the provisions of this Act shall apply to the assignee named in such assignment. 1 and 2 Ed. VII., c. 2, s. 6.

8. Assignments to take precedence of judgments, executions, &c.—An assignment for the general benefit of creditors under this Act shall take precedence of all attachments of debts by way of garnishment where the money has not been actually paid over to the garnishing creditor, as well as of all other attachments and of all judgments and registered certificates of judgments and of all executions not completely executed by payment, subject to the lien, if any, of execution or attaching creditors for their costs. 1 and 2 Ed. VII., c. 2, s. 11.

9. Sheriff to hand over property seized.—In case a deed of assignment as aforesaid has been duly executed and registered, the sheriff or bailiff of a County Court having seized property of the assignor under execution or attachment shall, upon receiving a copy of the assignment, duly certified by the clerk of the County Court in the office of which it is registered, forthwith deliver to the assignee all the estate and effects of the execution debtor in his hands, upon payment by the assignee to the sheriff or bailiff of his fees and charges and the costs of the execution creditor or creditors who has or have a lien as above provided. If the sheriff or bailiff has sold the debtor's estate or any part thereof, he shall deliver to the assignee the moneys so realized by him, less his fees

and the said execution creditor's costs. The assignee shall have the same power to enforce a return and the same remedies for failure or neglect to return that an execution creditor has under "The King's Bench Act," or "The County Courts Act," or otherwise. 58 and 59 V., c. 6, r. 695a, *part*.

10. Amendment of assignment by Judge.—No advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in any assignment under this Act for the general benefit of creditors, if the same can be amended or corrected; and any such mistake, defect or imperfection shall be amended by any Judge of the Court of King's Bench or of the County Court in the office of which it is registered or by this Act required to be registered. Such amendment may be made on application of the assignee or of any creditor of the assignor, on such notice being given to other parties concerned, as the Judge shall think reasonable; and the amendment, when made, shall have relation back to the date of the assignment, but so as not to prejudice the rights of innocent purchasers. 1 and 2 Ed. VII., c. 2, s. 12.

11. Notice of assignment to be published.—No assignment made for the general benefit of creditors under this Act shall be within the operation of "The Bills of Sale and Chattel Mortgage Act," but a notice of the assignment shall, as soon as conveniently possible, be published at least once in *The Manitoba Gazette* and not less than twice in at least one newspaper having a general circulation in the judicial district in which the property assigned is situate. 1 and 2 Ed. VII., c. 2, s. 13, s-s. 1.

12. Assignment to be registered.—A counterpart or copy of every such assignment shall also, within ten days from the execution thereof, be registered (together with an affidavit of a witness thereto of the due execution of such counterpart or of the assignment of which the copy filed purports to be a copy) in the office of the clerk of the County Court of the judicial division where the assignor, if a resident in Manitoba, resides at the time of the execution thereof, or, if he is not a resident, then in the office of the clerk of the County Court of the judicial division where the personal property so assigned is or where the principal part thereof (in case the assignment includes property in more judicial divisions than one) is at the time of the execution of such assignment; and such clerks shall file all such instruments presented to them respectively for that purpose and shall indorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein. The said clerks respectively shall number and enter such assignments, and be entitled to the same fees for services in the same manner as if such assignments had been registered under "The Bills of Sale and Chattel Mortgage Act." 1 and 2 Ed. VII., c. c. 2, s. 13. s-s. 2.

13. Penalty for neglecting publication or registration.—If the said notice is not published in the regular number of *The Manitoba Gazette* and in such newspaper as aforesaid within ten days from the execution the assignment by the assignor, or if the assignment is not registered as aforesaid within ten days from the execution thereof, the assignor shall be liable to a penalty of twenty-five dollars for each and every day which shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published; and a like penalty for each and every day which shall pass after the expira-

tion of ten days from the execution of the assignment by the assignor until the same shall have been registered.

(a.) The assignee shall be subject to a like penalty for any such delay for each and every day which shall pass after the expiration of ten days from the delivery of the assignment to him, or of ten days after his assent thereto. The burden of proving the time of such delivery or assent shall be upon the assignee.

(b.) Such penalties may be recovered summarily with costs before any judge of the Court of King's Bench, and one-half of the penalty shall go to the party suing and the other half for the benefit of the estate of the assignor.

(c) **Liability of official assignee.**—In case of an assignment to an official assignee, he shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment a reasonable time before the time required for so advertising and registering, nor shall he be compelled to act under the assignment until his costs in that behalf are paid or tendered to him. 1 and 2 Ed. VII., c. 2, s. 14.

14. Compelling publication and registration.—In case the assignment is not registered and notice thereof published within the time hereinbefore prescribed, an application may be made by any one interested in the assignment to a Judge of the Court of King's Bench to compel the registration of the assignment and publication of such notice; and the Judge shall make his order in that behalf, and with or without costs, or upon the payment of costs by such person as he may in his discretion direct to pay the same. 1 and 2 Ed. VII., c. 2, s. 15.

15. Assignment not invalidated by omission to publish, &c.—The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment. 1 and 2 Ed. VII., c. 2, s. 16.

CREDITORS' ASSIGNEE.

16. Appointment of substituted assignee.—A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards may at their discretion substitute any other person for any assignee to whom an assignment has been made. 1 and 2 Ed. VII., c. 2, s. 8, s-s. 1.

17. Rights and duties of the substituted assignee.—Where a new assignee is substituted or appointed as in the last preceding section provided, the estate shall forthwith vest in the new or additional assignee, without a conveyance or transfer, and he shall register an affidavit of his appointment in the office in which the original assignment was filed. Such an affidavit may also be registered under "The Registry Act" or filed under "The Real Property Act," and such registration or filing shall have the same effect as the registration of a conveyance or filing of a transfer. 1 and 2 Ed. VII., c. 2, s. 8, s-s. 2.

MEETINGS OF CREDITORS.

18. Assignee to call meeting of creditors.—It shall be the duty of the assignee immediately to inform himself, by reference to the debtor and his records of account, of the names and residences of the debtor's creditors, and, within five days from the date of as-

signment, to convene a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held in his office, or some other convenient place to be named in the notices, not later than twelve days after the mailing of such notice; and he shall also publish such notice by advertisement in *The Manitoba Gazette* in the first issue after the expiration of such period of five days. 1 and 2 Ed. VII., c. 2, s. 17.

19. Meeting of creditors by request of majority thereof.—In case of a request in writing signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act, it shall be the duty of the assignee, within two days after receiving such request, to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default, the assignee shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called. 1 and 2 Ed. 7, c. 2, s. 18, s-s. 1.

20. Judge to give directions in case creditors do not attend.—In case a sufficient number of creditors do not attend the meeting mentioned in the last preceding section, or fail to give directions with reference to the disposal of the estate, any of the Judges aforesaid may give all necessary directions in that behalf. 1 and 2 Ed. VII., c. 2, s. 18, s-s. 2.

21. Voting at meeting.—At any meeting of creditors the creditors may vote in person, or by proxy authorized in writing; but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. 1 and 2 Ed. VII., c. 2, s. 19.

22. Scale of votes.—Subject to the provisions of the sixteenth and twentieth sections hereof, all questions discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:—

For every claim of or over one hundred dollars, and less than two hundred dollars, one vote.

For every claim of or over two hundred dollars, and less than five hundred dollars, two votes.

For every claim of or over five hundred dollars, and less than one thousand dollars, three votes.

For every additional one thousand dollars, or fraction thereof, one vote.

(a) **Upon claims acquired after assignment.**—No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(b) **Casting vote.**—In case of a tie the assignee, or, if there are two assignees, then the assignee nominated for that purpose by creditors (or by the Judge if none has been nominated by the creditors), shall have a casting vote. 1 and 2 Ed. VII., c. 2, s. 20, s-ss. 1-3.

CREDITORS' CLAIMS.

23. Proof of claim.—Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particu-

lars of his claim, proved by affidavit and such vouchers as the nature of the case admits of. 1 and 2 Ed. VII., c. 2, s. 21, s-s. 1.

24. Limiting time for proof of claim.—In case a person claiming to be entitled to rank on the estate assigned does not, within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim, as provided by this and the preceding sections of this Act, a Judge of the Court of King's Bench may, upon a summary application by the assignee or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that, unless the claim be proved to the satisfaction of the Judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the estate assigned, and shall be wholly barred of any right to share in the proceeds thereof; and, if the claim is not so proved within the time so limited, or within such further time as the said Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor.

(a) **Not to interfere with Trustee Act.**—This section is not intended to interfere with the protection afforded to assignees by the fortieth and forty-first sections of "The Manitoba Trustee Act." 1 and 2 Ed. VII., c. 2, s. 21, s-ss. 2, 3.

25. Creditor may prove claim not due.—A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due. 1 and 2 Ed. VII., c. 2, s. 21, s-s. 4.

26. Set-off.—The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions respecting frauds or fraudulent preferences of this or any other Act. 1 and 2 Ed. VII., c. 2, s. 26.

27. How claims are to rank where different estates.—If any assignor or assignors executing an assignment under this Act for the general benefit of his or their creditors owes or owed debts both individually and as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. 1 and 2 Ed. VII., c. 2, s. 7.

28. Workmen's wages not exceeding three months privileged claims under assignment for benefit of creditors.—**Provisions applicable to all wages.**—In case of an assignment under this Act, the assignee shall pay, in priority to the claims of the ordinary or general creditors of the person making the same, the wages or salary of all persons in the employ of such person at the time of the making of such assignment, or within one month before the making thereof, not exceeding three months' wages or salary, such wages or salary to be for arrears only and not for any

unearned portion, and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims for arrears of such wages or salary. The provisions of this section shall apply to wages or salary, whether the employment in respect of which the same may be payable be by the day, week, month or year. 1 and 2 Ed. VII., c. 2, s. 4.

29. Creditors to value securities.—Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon; and the assignee, under the authority of the creditors, may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate. 1 and 2 Ed. VII., c. 2, s. 20, s-s. 4.

30. Right to revalue in certain cases.—If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the last preceding section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment he shall be entitled to amend and revalue his claim. 1 and 2 Ed. VII., c. 2, s. 20, s-s. 5.

31. When creditor holding security fails to value same.—In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, a Judge of the Court of King's Bench may upon summary application by the assignee or by any other person interested in the debtor's estate, of which application three days' notice shall be given to such claimant order that unless a specified value shall be placed on such security and notified in writing to the assignee within a time to be limited by the order, such claimant shall, in respect of the claim or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the said order, or within such further time as the said Judge may by subsequent order allow, the said claim or the said part, as the case may be, shall be wholly barred as against such estate, but without prejudice to the liability of the debtor therefor. 1 and 2 Ed. VII., c. 2, s. 20, s-s. 6.

32. Contestation of claim.—At any time after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge of the Court of King's Bench may on application allow, an action shall be brought by the claimant against the assignee to establish the claim and a copy of the statement of claim in the action, or summons in

case the action is brought in a County Court, shall be served on the assignee; and, in default of such action being brought and statement of claim or summons served within the time aforesaid, the claim to rank on the estate shall be forever barred.

(a) **Service of process on solicitors.**—The notice by the assignee shall contain the name and place of business of one of the solicitors of the Court of King's Bench for Manitoba, upon whom service of the statement of claim or summons may be made; and service upon such solicitor shall be deemed sufficient service of the statement of claim or summons. 1 Ed. VII., c. 2, s. 22.

33. Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.—In case the assignee is satisfied with the proof adduced in support of a claim, but the debtor disputes the same, such debtor shall do so by notice in writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days of such debtor being notified in writing by the assignee that he is satisfied with the proof adduced as aforesaid, and not afterwards unless by special leave of a Judge of the Court of King's Bench.

(a) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim, he shall notify the debtor in writing of this fact, and the debtor may thereupon, and within ten days of his receiving such notice, apply to the said Judge for an order requiring the assignee to serve a notice of contestation. The Judge shall only make such order if, after notice to the assignee, the Judge is of opinion that there are good grounds for contesting the claim. In case the debtor does not make an application as aforesaid, the decision of the assignee shall as against him be final and conclusive so far as regards the distribution of the assigned estate.

(b) If upon the application the claimant consents in writing, the Judge may, in a summary manner, decide the question of the validity of the claim.

(c) If an action is brought by the claimant against the assignee, the debtor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-examining witnesses. 1 and 2 Ed. VII., c. 2, s. 23.

DIVIDENDS.

34. Dividends, when to be paid.—As large a dividend as can with safety be paid shall be paid by every assignee under this Act within six months from the date of any assignment made hereunder, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors, until the estate is wound up and disposed of. 1 and 2 Ed. VII., c. 2, s. 28.

35. Notice of dividend sheet.—So soon as a dividend sheet is prepared notice thereof shall be given by letter posted to each creditor, inclosing an abstract of receipts and disbursements, showing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and, after the expiry of eight days from the day of mailing such notice, abstract and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid. 1 and 2 Ed. VII., c. 2, s. 29.

ADMINISTRATIONS OF ESTATE.

36. Assets not to be removed out of the Province, and moneys to be deposited in a bank.—No property or assets of an estate assigned under the provisions of this Act shall be removed out of the Province without the order of a Judge of the Court of King's Bench; and the proceeds of the sale of any such property or assets and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of such Judge, except in payment of dividends and other charges incidental to the winding up of the estate, which shall include rent, wages, mortgages, secured and preferred and partly secured and preferred claims.

(a) **Penalty.**—Any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be liable to a penalty of five hundred dollars, which may be recovered summarily with costs before any of the Judges aforesaid, and one-half of the said penalty shall go to the person suing therefor, and the other half shall belong to the said estate; but, in default of payment of the said penalty and all costs which may be incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be disqualified from acting as assignee of any estate while such default continues.

(b) **Application of section limited.**—This section shall not apply to any assignment executed before the first day of March in the year one thousand nine hundred and two or to any proceedings thereunder. 1 and 2 Ed. VII., c. 2, s. 24.

37. Accounts to be kept accessible.—Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate. 1 and 2 Ed. VII., c. 2, s. 25.

FRAUDULENT OR PREFERENTIAL TRANSFERS.

38. Gifts, transfers, &c., made by insolvents which defeat or prejudice creditors to be void.—Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth and forty-seventh sections of this Act, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be utterly void. 1 and 2 Ed. VII., c. 2, s. 2, s-s. 1.

39. Transfers with intent to prefer creditors.—Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth and forty-seventh sections of this Act, every gift, conveyance, assignment or

transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor, with intent to give such creditor preference over his other creditors, or over any one or more of them shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void. 1 and 2. Ed. VII., c. 2, s. 2, s-s 2.

40. Transfers having effect of preference void, if attacked within sixty days.—Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth and forty-seventh sections of this Act, every such gift, conveyance, assignment or transfer, delivery over or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor, or over one or more of them, shall, in and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be utterly void as against the creditor or creditors injured, delayed, prejudiced or postponed. 1 and 2 Ed. VII., c. 2, s. 2, s-s 3.

41. Or if assignment made within sixty days.—Subject to the provisions of the forty-fourth, forty-fifth, forty-sixth and forty-seventh sections of this Act, every such gift, conveyance, assignment or transfer, delivery over or payment as aforesaid, made to or for a creditor by a person at any time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, and which has the effect of giving such creditor a preference over the other creditors of the debtor or over one or more of them, shall, if the debtor, within sixty days after the transaction, makes an assignment for the benefit of his creditors, be utterly void as against the assignee or any creditor authorized to take proceedings to avoid the same under the forty-eighth section hereof. 1 and 2 Ed. VII., c. 2, s. 2, s-s 4.

42. What transactions to be deemed preferential.—Intent or motive immaterial.—Pressure or want of knowledge on part of creditor not to save the transaction.—A transaction shall be deemed to be one which has the effect of giving a creditor a preference over other creditors within the meaning of the two last preceding sections, if by such transaction a creditor is given or realizes, or is placed in a position to realize, payment, satisfaction or security for the debtor's indebtedness to him, or a portion thereof, greater proportionately than could be realized by or for the unsecured creditors generally of such debtor, or for the unsecured portion of his liabilities, out of the assets of the debtor left available and subject to judgment, execution, attachment or other process; and such effect shall not be deemed dependent upon the intent or motive of the debtor or upon the transaction being entered into voluntarily or under pressure; and no pressure by a creditor, or want of notice to the creditor alleged to have been so preferred of the debtor's circumstances, inability or knowledge as aforesaid, or of the effect of the transaction, shall avail to protect the transaction, except as provided by the forty-fourth and forty-seventh sections hereof. 1 and 2 Ed. VII., c. 2, s. 2, s-s 5.

43. "Creditor" for certain purposes to include surety and indorser.—When the word "creditor" or "creditors" occurs in any of the four last preceding sections, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange who would, upon payment by him of the debt, promissory note or bill of exchange, in respect of which such suretyship was entered into or such indorsement was given, become a creditor of the person giving the preference within the meaning of said sub-section, and such word shall include a *cestui que trust* or other person to whom the liability is equitable only. 1 and 2 Ed. VII., c. 2, s. 2, s-s. 6.

44. Assignments for benefit of creditors and "bona fide" sales, &c., protected.—Proviso.—Nothing in the six last preceding sections shall apply to any assignment made to an official assignee or, with the consent of a majority of the creditors having claims of one hundred dollars and upwards, computed according to the provisions of the twenty-second section of this Act, to any other person, for the purpose in each of the said cases of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind, as above mentioned, which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money, or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property; provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor. 1 and 2 Ed. VII., c. 2, s. 3, s-s. 1.

45. Transfer to creditor of consideration for sale invalid.—In case of a valid sale of goods, securities or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. 1 and 2 Ed. VII., c. 2, s. 3, s-s. 2.

46. Security given up upon void payment to be returned.—In case a payment has been made which is void under this Act, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before, or as a condition of, the return of the payment. 1 and 2 Ed. VII., c. 2, s. 3, s-s. 4.

47. Payment of wages protected.—Exchange of securities protected.—Certain assignments to be valid.—Nothing herein contained shall affect the priority of a claim for wages or salary under the twenty-eighth section of this Act, or shall prevent a debtor providing for payment of wages or salary due by him in accordance with the provisions of the said section. Nor shall anything herein contained affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of or has in good faith given up any valid security which he held for the payment of the debt so paid, unless the value of the se-

curity is restored to the creditor, nor the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where, by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business and to pay his debts in full. 1 and 2 Ed. VII., c. 2, s. 3, s-s. 5.

48. Rights of action of assignee.—Except as is hereinafter otherwise provided, the assignee shall have an exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this Act.

(a) **Creditor may proceed in certain cases, if assignee refuses.**—If at any time a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee, under the authority of the creditors or inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the creditor shall have the right to obtain an order of a Judge of the Court of King's Bench authorizing him to take the proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe; and thereupon any benefit derived from the proceedings shall, to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit; but if, before such order is granted, the assignee shall signify to the Judge his readiness to institute the proceedings for the benefit of the creditors the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate.

(b) **Creditors suing for rescission of void transactions for benefit of creditors generally.**—Where there is no valid assignment for the benefit of creditors, one or more creditors may, for the benefit of creditors generally, or for the benefit of such creditors as have been injured, delayed, prejudiced or postponed by the impeached transaction, sue for the rescission of or to have declared void agreements, deeds, instruments or other transactions made or entered into in fraud of creditors or in violation of this Act or thereby declared void; and in case any amendment of the statement of claim be made, the same shall relate back to the commencement of the action for the purpose of the time limited by the fortieth section hereof.

(c) **Delivery over and sale of property affected.**—In any action under this section the Court may direct delivery of any property in question to the assignee or a sheriff or a receiver, and may order a sale thereof and such distribution of the proceeds as may seem equitable, either through the assignee or through a sheriff or receiver or otherwise as may seem proper.

(d) **Distribution of proceeds of property amongst creditors "pro rata."**—In case of a transaction void under this Act as entered into with intent to give a preference or having the effect of giving a preference, the subject matters shall not be seizable or attachable or liable to sale for the satisfaction, according to priorities otherwise prevailing of judgments, attachments, or other process,

except executions; but where not realized under execution so as to be distributable by a sheriff or bailiff among creditors, the Court shall have and exercise jurisdiction to realize the same for the benefit of all the creditors, and to distribute the proceeds among them rateably and proportionately. 1 and 2 Ed. VII., c. 2, s. 9.

49. Following proceeds of property fraudulently transferred.—In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which in law is invalid against creditors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realised or collected, the property or any part thereof, the money or other proceeds or the amount thereof, whether further disposed of or not, may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but, in case there is no such assignment, shall exist in favor of all creditors of such debtor.

(a) **Taking proceeds under execution.**—Where there has been no valid assignment for the benefit of creditors, and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable rateably amongst the creditors under "The Executions Act" or "The County Courts Act" or otherwise.

(b) **Creditor suing on behalf of himself and other creditors.**—Where there has been no valid assignment for the benefit of creditors, and whether the proceeds realized as aforesaid are or are not of a character to be seized under execution, an action may be brought therefor or to recover the amount thereof by a creditor (whether a judgment creditor or not) on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds or the amount thereof available for the general benefit of the creditors.

(c) **Protection of innocent purchasers.**—This section shall not apply as against innocent purchasers of any such property. 1 and 2 Ed. VII., c. 2, s. 10.

EXAMINATION OF ASSIGNORS AND OTHERS.

50. Examination of assignor or employees.—Where there has been an assignment for the benefit of creditors the assignee or assignees, upon resolution passed by a majority vote of the creditors present or represented at a meeting of the creditors of the assignor regularly called, or upon the written request or resolution of the majority of the inspectors of the estate, may, without an order, examine the assignor or any person who is or has been an agent, clerk, servant, officer or employee of any kind of the assignor, upon oath, before a master or local master or a special examiner of the Court of King's Bench, or before a deputy clerk of the Crown of the Court of King's Bench, or before the Judge of the County Court of the judicial division within which such assignor resides, or may, by the order of a Judge of any Court aforesaid, examine the assignor on oath before any other person to be specially

named in such order, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him. 1 and 2 Ed. VII., c. 2, s. 33.

51. Procedure upon examination of an assignor.—The rules and procedure from time to time in force in the Court of King's Bench for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor. 1 and 2 Ed. VII., c. 2, s. 34.

52. When assignor does not attend or refuses to answer questions.—In case such assignor does not attend as required by any appointment, or appointment and order, as the case may be, served on him, and does not allege a sufficient excuse for not attending, or, if attending, refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or, if it appears from such examination of the assignor that such assignor has concealed or made away with any part of his property in order to defeat or defraud his creditors or any of them, any Judge of any of the Courts aforesaid may order the assignor to be committed to the common gaol of the judicial district in which he resides for any term not exceeding twelve months. 1 and 2 Ed. VII., c. 2, s. 35.

53. Service of appointment.—Any person liable to be examined under the fiftieth section of this Act may be served with an appointment signed by the Judge or officer mentioned in the fiftieth section of this Act, or a copy thereof, and, where the examination is to take place under an order, also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness. 1 and 2 Ed. VII., c. 2, s. 36, s-s 1.

54. Conduct of examination.—The examination under the fiftieth section of this Act shall be conducted in the same manner as in the case of an oral examination of an opposite party, in a suit or action. 1 and 2 Ed. VII., c. 2, s. 36, s-s 2.

55. Compelling attendance and production of books.—Any person liable to be examined under the fiftieth section hereof may be compelled to attend and testify and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Court of King's Bench. 1 and 2 Ed. VII., c. 2, s. 37.

56. Calling upon persons having information as to assignor's affairs to give evidence and produce documents, &c.—In case any person has, or is believed or suspected to have, in his possession or power any of the assignor's property, or any book, document or paper of any kind relating in whole or in part to the assignor, his dealings or property, such person may, upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor (exclusive

of such person, if he is a creditor), or upon the written request or resolution of the majority of the inspectors of the estate, be required by the assignee to produce such books, documents or papers for the information of such assignee, or to deliver over to him any such property of the debtor.

(a) **Examination of person failing to produce documents or to deliver property.**—In case such person fails to produce the said book, document or other paper, or to deliver over such property, within four days of his being served with a copy of the said resolution and a request of the assignee in that behalf, or in case the assignee or the majority of the inspectors is or are not satisfied that full production or delivery has been made, the assignee may, without an order, examine the said person before any of the officers mentioned in the fiftieth section of this Act touching any such property or document or other paper which he is supposed to have received.

(b) **Enforcing attendance and production.**—Any such person may be compelled to attend and testify, and to produce upon his examination any book, document or other paper which under this section he is liable to produce in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Court of King's Bench. 1 and 2 Ed. VII., c. 2, s. 38.

REMUNERATION OF ASSIGNEE AND INSPECTORS.

57. Remuneration of assignee.—The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors in case of the creditors failing to provide therefor, subject to the review of a Judge of the Court of King's Bench if complained of by the assignee or any of the creditors. 1 and 2 Ed. VII., c. 2, s. 30.

58. Where remuneration not fixed before the final dividend.—In case the remuneration of the assignee has not been fixed under the last preceding section before the final dividend, the assignee may insert in the final dividend sheet and retain as his remuneration a sum not exceeding five per cent. of the cash receipts, subject to review by a Judge as hereinbefore provided; but no application by the assignee to review the said allowance shall be entertained unless, previous to the preparation of the final dividend sheet, the question of his remuneration has been brought before a meeting of creditors competent to decide the same. 1 and 2 Ed. VII., c. 2, s. 31.

59. Remuneration of inspectors.—The assignee may pay or allow to each inspector appointed under this Act a reasonable charge or sum for the due performance of his duties as such inspector, but no such payment or allowance to an inspector in any estate shall exceed the sum of twenty-five dollars. 1 and 2 Ed. VII., c. 2, s. 32.

AFFIDAVITS.

60. Affidavits.—Any affidavit authorized or required under this Act may be sworn before any person authorized by "The Manitoba Evidence Act" to administer affidavits, or before a justice of the peace, or, if sworn out of Manitoba, before a notary public or other functionary authorized to administer oaths outside of this Province under any statute thereof. 1 and 2 Ed. VII., c. 2, s. 27.

ONTARIO.

R. S. O., 1897, CHAP. 338.

AN ACT FOR PREVENTION OF FRAUDS AND PERJURIES.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows.—

1. Short title.—This Act may be cited as *The Statute of Frauds, New*.

2. Reasons for passing this Act.—Parol leases and interests of freehold, etc., to have the force of estates at will only.—For prevention of many fraudulent practices which are commonly endeavoured to be upheld by perjury, and subornation of perjury, all leases, estates, interests of freehold, or terms of years, or any uncertain interest of, in, to, or out of, any messuages, lands, tenements, or hereditaments, made or created by livery and seizin only, or by parol, and not put in writing and signed by the parties so making, or creating, the same, or their agents thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect; any consideration for making any such parol leases or estates, or any former law or usage to the contrary notwithstanding. 29 Car. 2, c. 3, s. 1.

(See also R.S.O. c. 119, s. 7.)

3. Except leases not exceeding three years, etc.—Except, nevertheless, all leases not exceeding the term of three years from the making thereof, whereupon the rent reserved to the landlord during such term shall amount unto two-third parts at the least of the full improved value of the thing demised. 29 Car. 2, c. 3, s. 2.

4. No leases, or estates of freehold, etc., to be granted or surrendered but by writing signed.—And, moreover, no leases, estates or interests, either of freehold, or terms of years, or any uncertain interest, of, in, to, or out of, any messuages, lands, tenements, or hereditaments, shall be assigned, granted, or surrendered, unless it be by deed, or note in writing, signed by the party so assigning, granting, or surrendering, the same, or his agent, thereunto lawfully authorized by writing, or by act and operation of law. 29 Car. 2, c. 3, s. 3.

(See R.S.O. c. 119, ss. 3, 7.)

5. No action against executors, etc., upon a special promise; or upon any agreement, or contract for sale of lands, etc., unless agreement, etc., be in writing and signed.—No action shall be brought whereby to charge any executor, or administrator, upon any special promise to answer damages out of his own estate, or whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages, of another person, or to charge any person upon any agreement made upon consideration of marriage, or upon any contract or sale of lands, tenements or hereditaments, or any interest in, or concerning them, or upon any agreement that is not to be performed within the space of one year from the making thereof, unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged

therewith, or some person thereunto by him lawfully authorized. 29 Car. 2, c. 3, s. 4.

6. Declarations or creations of trusts of land to be in writing signed.—All declarations of creations of trusts or confidences of any lands, tenements, or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void, and of none effect. 29 Car. 2, c. 3, s. 7.

7. Proviso for trusts arising, transferred, or extinguished, by application of law.—Provided always, that where any conveyance shall be made of any lands or tenements, by which a trust or confidence shall or may arise, or result, by the implication, or construction of law, or be transferred, or extinguished; by an act, or operation of law, then, and in every such case, such trust or confidence shall be of the like force and effect as the same would have been if this statute had not been made; any thing hereinbefore contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 8.

8. Assignments of trusts shall be in writing.—All grants and assignments of any trust or confidence shall likewise be in writing signed by the party granting or assigning the same, or by such last will or devise, or else shall likewise be utterly void, and of none effect. 29 Car. 2, c. 3, s. 9.

9. Lands, etc., of "cestui que trust" liable to judgments, etc., and held free from the incumbrances of the persons seized in trust.—Trust shall be assets by descent.—It shall and may be lawful for every sheriff, or other officer, to whom any writ or precept is, or shall be, directed at the suit of any person of, for, and upon, any judgment, statute, or recognizance, hereafter to be made or had, to do, make, and deliver execution unto the party, in that behalf suing, of all such lands, tenements, rectories, rents and hereditaments, as any other person be in any manner of wise seized, or possessed, or hereafter shall be seized or possessed, in trust for him, against whom execution is so sued, like as the sheriff or other officer might, or ought to have done, if the said party against whom execution hereafter shall be so sued had been seized of such lands, tenements, rectories, rents, or other hereditaments of such estate as such other person be seized of in trust for him at the time of the said execution sued, which lands, tenements, rectories, rents, and other hereditaments, by force and virtue of such execution, shall accordingly be held and enjoyed, free and discharged from all incumbrances of such person as shall be so seized, or possessed, in trust for the person against whom such execution shall be sued; and if any *cestui que trust* hereafter shall die leaving a trust in fee simple to descend to his heir, then, and in every such case, such trust shall be deemed and taken, and is hereby declared, to be assets by descent, and the heir shall be liable to, and chargeable with, the obligations of his ancestors for, and by reason, of such assets, as fully and amply as he might, or ought to have been, if the estate in law had descended to him in possession, in like manner as the trust descended; any law, custom, or usage, to the contrary, in any wise notwithstanding. 29 Car. 2, c. 3, s. 10.

(See R. S. O. c. 127, s. 3.)

10. But heir shall not by reason thereof become chargeable of his own estate.—Provided always, no heir that shall become chargeable by reason of any estate, or trust, made assets in his

hands by this law, shall by reason of any kind of plea or confession of the action, or suffering judgment by *nient addire*, or any other matter, be chargeable to pay the condemnation out of his own estate, but execution shall be sued of the whole estate so made assets in his hands by descent, in whose hands soever it shall come after the writ purchased, in the same manner as it is to be at and by the common law, where the heir at law pleading a true plea judgment is prayed against him thereupon; anything in the present Act contained to the contrary notwithstanding. 29 Car. 2, c. 3, s. 11.

11. Writs of execution to bind the property of goods, but from the time of their delivery to the officer.—No writ of *fiery facias*, or other writ of execution, shall bind the property of the goods, against which such writ of execution is sued forth, but from the time that such writ shall be delivered to the sheriff, under-sheriff, or coroner to be executed, and, for the better manifestation of the said time, the sheriff, under-sheriff, and coroner, their deputies, and agents, shall, upon the receipt of any such writ (without fee for doing the same), indorse upon the back thereof the day of the month and year whereon he or they received the same. 29 Car. 2, c. 3, s. 15, (or s. 16 in Ruffhead's Ed.).

(See R. S. O., c. 77, s. 7.)

12. In what cases only contracts for sales of goods for \$40 or more to be binding.—No contract for the sale of any goods, wares, or merchandises, for the price of forty dollars, or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment, or that some note or memorandum in writing of the said bargain be made, and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized. 29 Car. 2, c. 3, s. 16 (or s. 17 in Ruffhead's Ed.).

(See R. S. O., c. 146, s. 9.)

R. S. O. 897, CHAP. 334.

AN ACT AGAINST FRAUDULENT DEEDS, GIFTS, DEVISES, ALIENATIONS, ETC.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Evils of feigned conveyances to defraud creditors; such conveyances declared void as against the creditors.—For the avoiding and abolishing of feigned, covinous, and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, as well of lands and tenements as of goods and chattels, more commonly used and practised in these days, than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions, have been, and are, devised and contrived of malice, fraud, covin, collusion, or guile, to the end, purpose and intent to delay, hinder, or defraud, creditors and others, of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures, not only to the let or hindrance of the due course and execution of law and justice, but also to the over-

throw of all true and plain dealing, bargaining and chevysaunce, between man and man, without the which no commonwealth or civil society can be maintained or continued:—All and every feoffment, gift, grant, alienation, bargain, and conveyance, of lands, tenements, hereditaments, goods and chattels, or any of them, or of any lease, rent, common, or other profits, or charge, out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, suit, judgment, and execution, at any time had or made, or at any time hereafter to be had or made, to or for any intent or purpose before declared and expressed, shall be from henceforth deemed and taken, only as against that person and his assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, by such guileful, covinous or fraudulent, devices and practices as is aforesaid, are, shall, or might be, in any wise disturbed, hindered, delayed, or defrauded, to be clearly and utterly void, frustrate, and of none effect, any pretence, colour, feigned consideration, expressing of use, or any other matter or thing, to the contrary notwithstanding. 13 Eliz., c. 5, s. 1.

2. All parties to such fraudulent conveyances, putting the same in effect, shall forfeit one year's value of land, and the whole value of goods so conveyed; half to the Crown, and half to the party grieved.—All and every the parties to such feigned, covinous, or fraudulent feoffment, gift, grant, alienation, bargain; conveyance, bonds, suits, judgments, executions, and other things before expressed, or being privy to, and knowing of, the same or any of them, which at any time shall wittingly and willingly put in use, avow, maintain, justify, or defend, the same or any of them, as true, simple, and done, had, or made, *bona fide* upon good consideration, or shall alien or assign, any of the lands, tenements, goods, leases, or other things before mentioned, to him or them conveyed as is aforesaid, or any part thereof, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments, leases, rents, commons, or other profits of, or out of, the same, and the whole value of the said goods and chattels, and also so much money as shall be contained in any such covinous and feigned bonds; the one moiety whereof to be to the Crown, and the other moiety to the party grieved by such feigned and fraudulent feoffment, gift, grant, alienation, bargain, conveyance, bonds, suits, judgments, executions, leases, rents, commons profits, charges, and other things aforesaid, to be recovered by action in any court of record of competent jurisdiction; and also, being thereof lawfully convicted, shall suffer imprisonment for one-half year without bail or mainprize. 13 Eliz., c. 5, s. 2.

3. Proviso for conveyances by tenants in tail, &c.—Where a conveyance made by a tenant in tail is impeached under section 1, such deed shall, nevertheless, be as valid as against the heirs in tail, and all persons entitled in reversion, or remainder, as if this Act had not been made. 13 Eliz., c. 5, s. 3.

4. Proviso for conveyances made "bona fide," and on good consideration.—Sections 1 and 2 or anything therein contained, shall not extend to any estate or interest, in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels, had, made, conveyed or assured, or hereafter to be had, made, conveyed, or assured, upon good consideration, and *bona fide*, to any person not having at the time of such conveyance or assurance to him made any manner of notice or knowledge of such covin, fraud, or collusion, as

is aforesaid; anything before mentioned to the contrary hereof notwithstanding. 13 Eliz., c. 5, s. 5.

5. Fraudulent conveyances, made to deceive purchasers, declared void as against such purchasers.—All and every conveyance, grant, charge, lease, estate, incumbrance, and limitation of use, or uses, of, in, or out of, any lands, tenements or other hereditaments whatsoever, had or made, or at any time hereafter to be had or made, for the intent and of purpose to defraud and deceive such person as may have purchased, or shall afterwards purchase, in fee simple, fee tail, for life, lives, or years, the same lands, tenements, and hereditaments, or any part or parcel thereof, so formerly conveyed, granted, leased, charged, incumbered, or limited in use, or to defraud and deceive such as have, or shall, purchase any rent, profit or commodity in or out of, the same, or any part thereof, shall be deemed and taken, only as against that person and his assigns, and against all and every other person lawfully having or claiming by, from, or under him, or them, which have purchased, or shall hereafter so purchase, for money or other good consideration the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in, or out of, the same, to be utterly void, frustrate and of none effect, any pretence, colour, feigned consideration, or expressing of any use or uses, to the contrary notwithstanding. 27 Eliz., c. 4, s. 1.

6. Penalty upon all parties to such fraudulent conveyances, putting the same in effect, one year's value, half to the Crown and half to the party grieved; and half a year's imprisonment.—All and every the parties to such feigned, covinous, and fraudulent gifts, grants, leases, charges, or conveyances, before expressed, or being privy to, and knowing of, the same or any of them, who shall wittingly and willingly put in use, avow, maintain, justify or defend the same or any of them, as true, simple and done, had or made, *bona fide*, or upon good consideration, to the disturbance or hindrance of the said purchaser or purchasers, lessees, or grantees, or to the disturbance, or hindrance of their heirs, successors, executors, administrators or assigns, or such as have, or shall lawfully claim, anything by, from, or under, them, or any of them, shall incur the penalty and forfeiture of one year's value of the said lands, tenements, and hereditaments, so purchased, or charged, the one moiety whereof to be to the Crown, and the other moiety to the party grieved by such feigned and fraudulent gift, grant, lease, conveyance, incumbrance, or limitation of use, to be recovered by action, in any court of record of competent jurisdiction; and also, being thereof lawfully convicted, shall suffer imprisonment for one-half year without bail or main-prize. 27 Eliz., c. 4, s. 2.

7. Proviso for conveyances made on good consideration, etc.—Sections 5 and 6 or anything therein contained, shall not extend, or be construed, to impeach, defeat, make void or frustrate, any conveyance, assignment of lease, assurance, grant, charge, lease, estate, interest, or limitation of use or uses, of, in, to, or out of, any lands, tenements or hereditaments, heretofore at any time had or made, or hereafter to be had or made upon, or for, good consideration, and *bona fide*, to any person; anything before mentioned to the contrary hereof notwithstanding. 27 Eliz., c. 4, s. 3.

8. Subject to Rev. Stat. c. 115.—Conveyances made revocable, of lands afterwards sold for good consideration, declared void against the purchasers.—Proviso for mortgages.—

Subject to the provisions of sections 1 and 2 of the Revised Statutes of Ontario, chapter 115, if any person shall make any conveyance, gift, grant, demise, charge, limitation of use or uses, or assurance of, in, or out of, any lands, tenements or hereditaments, with any clause, provision, article or condition, of revocation, determination, or alteration, at his will or pleasure, of such conveyance, assurance, grant, limitation of uses or estates, of, in, or out of, the said lands, tenements or hereditaments, or of, in, or out of, any part or parcel of them, contained or mentioned in any writing, deed or indenture of such assurance, conveyance, grant or gift, and after such conveyance, grant, gift, demise, charge, limitation of uses, or assurance, so made or had, shall bargain, sell, demise, grant, convey, or charge the same lands, tenements or hereditaments, or any part or parcel thereof, to any person for money, or other good consideration paid or given (the said first conveyance, assurance, gift, grant, demise, charge, or limitation not by him revoked, made void or altered, according to the power and authority reserved or expressed unto him in and by the said secret conveyance, assurance, gift or grant), then the said former conveyance, assurance, gift, demise and grant, as touching the said lands, tenements and hereditaments, so after bargained, sold, conveyed, demised or charged, against the said bargainees, vendees, lessees, grantees, and every of them, their heirs, successors, executors, administrators and assigns, and against every person lawfully claiming any thing by, from, or under them or any of them, shall be deemed taken and adjudged to be void, frustrate, and of none effect, by virtue and force of this present Act. Provided, nevertheless, that no lawful mortgage made, or to be made, *bona fide*, and without fraud or covin, upon good consideration, shall be impeached or impaired by force of this Act, but shall stand in like force and effect as the same should have done if this Act had never been made; any thing in this Act to the contrary in any wise notwithstanding. 27 Eliz., c. 4, s. 4.

R. S. O., 1897, CHAP. 115.

AN ACT RESPECTING VOLUNTARY AND FRAUDULENT CONVEYANCES.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

VOLUNTARY CONVEYANCES.

1. No voluntary conveyance, etc., executed in good faith and duly registered to be void merely for absence of valuable consideration.—Notwithstanding the provisions of the statute passed in the 27th year of the reign of Her late Majesty Queen Elizabeth, and chaptered four, no conveyance, grant, charge, lease, estate, incumbrance, limitation of use or uses which is executed in good faith, and duly registered in the proper registry office before the execution of the conveyance to, and before the creation of any binding contract for the conveyance, to any subsequent purchaser from the same grantor of the same lands, tenements or hereditaments, or any part or parcel thereof, or any rent, profit or commodity in or out of

the same, shall be or be deemed or taken to be, merely by reason of the absence of a valuable consideration, void, frustrate, or of none effect as against such purchaser, or his heirs, executors, administrators or assigns, or any person claiming by, from, or under any of them. R. S. O. 1887, c. 96, s. 1.

2. Instruments otherwise void not to be valid under preceding section.—Nothing in the preceding section contained shall have the effect of making valid any instrument which is for any reason other than or in addition to the absence of a valuable consideration void under the said statute or otherwise; nor shall anything in the preceding section contained have the effect of making valid any instrument as against a purchaser who had, before the 28th day of February, 1868, entered into a binding contract for, or received his conveyance upon such purchase. R. S. O. 1887, c. 96, s. 2.

FRAUDULENT CONVEYANCES.

3. Recital of ss. 1, 2 and 6 of 13 Eliz., c. 5, that certain conveyances, judgments, etc., to be void unless made to a "bona fide" purchaser for value.—Whereas by the first and second clauses of the Act passed in the 13th year of the reign of Her late Majesty Queen Elizabeth, it is enacted as follows:—

"For the avoiding and abolishing of feigned, covinous and fraudulent feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments, and executions more commonly used and practised in these days than hath been seen or heard of heretofore, which feoffments, gifts, grants, alienations, conveyances, bonds, suits, judgments and executions have been and are devised or contrived of malice, fraud, covin, collusion or guile, to the end, purpose and intent to delay, hinder and defraud creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, forfeitures; heriots, mortuaries and reliefs, not only to the let or hindrance of the due course and execution of law and justice but also to the overthrow of all true and plain dealing, bargain and chevissance between man and man, without the which no commonwealth or civil society can be maintained or continued; all and every feoffment, gift, grant, alienation, bargain and conveyance of lands, tenements, hereditaments, goods and chattels, or of any of them, or of any lease, rent, common or other profit or charge out of the same lands, tenements, hereditaments, goods and chattels, or any of them, by writing or otherwise, and all and every bond, writ, judgment and execution, at any time had or made since the beginning of the Queen's Majesty's reign, that now is or at any time hereafter to be had or made to or for any intent or purpose before declared or expressed, shall be from thenceforth deemed and taken only as against that person or persons, his or their heirs, successors, executors, administrators and assigns, and every of them, whose actions, suits, debts, accounts, damages, penalties, forfeitures, heriots, mortuaries and reliefs, by such guileful, covinous and fraudulent devices and practices as is aforesaid, are or shall or might be in any ways disturbed, hindered, delayed or defrauded to be clearly and utterly void, frustrate and of none effect, any pretence, colour, feigned consideration expressing of use or any other matter or thing to the contrary notwithstanding."

And whereas it is also by the sixth clause of the said Act provided and enacted as follows:

"This Act or anything herein contained shall not extend to any estate or interest in lands, tenements, hereditaments, leases, rents, commons, profits, goods or chattels had, made, conveyed or assured, or hereafter to be had, made, conveyed or assured, which estate or interest is or shall be upon good consideration and *bona fide* lawfully conveyed or assured to any person or persons, or bodies politic or corporate, not having at the time of such conveyance or assurance to them made any manner of notice or knowledge of such covin, fraud or collusion as is aforesaid, anything before mentioned to the contrary thereof notwithstanding"

And whereas there are doubts as to the true construction of the said Act, and it is expedient to declare the true construction of the same;

Therefore it is further enacted as follows:—

1. When valuable consideration and intent to pass interest not to avail.—The first and second clauses of the said Act apply to all instruments executed to the end, purpose and intent in the said clauses set forth, notwithstanding that the same may be executed upon a valuable consideration, and with the intention, as between the parties to the same, of actually transferring to and for the benefit of the transferee the interest expressed to be thereby transferred, unless the same is protected under the sixth clause of the said Act by reason of *bona fides* and want of notice or knowledge on the part of the purchaser.

2. Instruments not affected.—This section shall not apply to any instrument executed before the second day of March, 1872. R. S. O. 1887, c. 96, s. 3.

R. S. O., 1897, CHAP. 147.

AN ACT RESPECTING ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS.

Confessions of judgment, cognovits, etc., in fraud of creditors to be void	s. 1
Assignments, etc., in prejudice of creditors to be void	s. 2
Recovery of proceeds where property sold	ss. 3-6
Assignments for benefit of creditors	ss. 3-6
How claims are to rank	s. 7
Appointment and rights of assignee	ss. 8-10
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Amendment by Court	s. 12
Assignment to be registered and notice thereof published,	ss. 13-16
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Assignee's remuneration	ss. 31-32
Inspector's remuneration	s. 33
Examination of assignor, etc.	ss. 34-39

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Confessions or warrants to confess judgment given by insolvents to defeat or delay creditors or to give one preference over the other to be void.—In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem* or warrant of attorney to confess judgment with intent, in giving such confession, *cognovit actionem* or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part or with intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession *cognovit actionem* or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution. R. S. O. 1887, c. 124, s. 1.

2. Gifts, transfers, etc., made by insolvents which defeat or prejudice creditors to be void.—(1) Subject to the provisions of section 3 of this Act, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes or securities, or of shares, dividends, premiums, or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them, shall as against the creditor or creditors injured, delayed or prejudiced, be utterly void.

(2) Subject to the provisions of section 3 aforesaid, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor with intent to give such creditor an unjust preference over his other creditors or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.

(3) Subject to the provisions of section 3 aforesaid, if such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall in and with respect to any action or proceeding which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be presumed *prima facie* to have been made with the intent aforesaid, and to be an unjust preference within the meaning hereof whether the same be made voluntarily or under pressure.

(4) Subject to the provisions of section 3 aforesaid, if such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor or over any one or more of them, it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be presumed *prima facie* to have been made with the intent aforesaid,

and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure. 54 V., c. 20, s. 1.

(5) **"Creditor" for certain purposes to include surety and endorser.—Pending proceedings not affected.**—Where the word "creditor occurs in the eighth and ninth lines of subsection 2 of this section, and in the second and third lines of subsection 3, and in the second and third lines of subsection 4, such word shall be deemed to include any surety and the indorser of any promissory note or bill of exchange, who would upon payment by him of the debt, promissory note or bill of exchange in respect of which such suretyship was entered into or such endorsement was given become a creditor of the person giving the preference within the meaning of said subsections. This subsection shall not affect any action, suit or proceeding pending on the 14th day of April, 1892, but the same shall be adjudicated upon and determined as if this subsection had not been passed. 55 V., c. 25, s. 1, 2.

3. Assignments for benefit of creditors and "bona fide" sales, etc., protected.—Proviso.—(1) Nothing in the preceding section shall apply to any assignment made to the sheriff of the county in which the debtor resides or carries on business, or with the consent of a majority of his creditors having claims of \$100 and upwards computed according to the provisions of section 20, to another assignee resident within the Province of Ontario, for the purpose in each of the said cases of paying rateably and proportionately and without preference or priority all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties; nor to any payment of money to a creditor, nor to any *bona fide* conveyance, assignment, transfer or delivery over of any goods, securities or property of any kind, as above-mentioned, which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money, or which is made in consideration of any present actual *bona fide* sale or delivery of goods or other property; provided that the money paid, or the goods or other property sold or delivered bear a fair and reasonable relative value to the consideration therefor.

(2) **Transfer to creditor of consideration for sale invalid.**—In case of a valid sale of goods, securities or property, and payment or transfer of the consideration or part thereof by the purchaser to a creditor of the vendor, under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. R. S. O. 1887, c. 124, s. 3. (1, 5).

(3) **General assignment not in accordance with Act, when voidable.**—Every assignment for the general benefit of creditors, which is not void under section 2 of this Act, but is not made to the sheriff, nor to any other person with the prescribed consent of creditors, shall be void as against a subsequent assignment which is in conformity with this Act, and shall be subject in other respects to the provisions of this Act until and unless a subsequent assignment is executed in accordance with this Act.

(4) **Security given up upon void payment to be returned.**—In case a payment has been made, which is void under this Act, and any valuable security was given up in consideration of the payment,

the creditor shall be entitled to have the security restored or its value made good to him before, or as a condition of, the return of the payment. R. S. O. 1887, c. 124, s. 3 (2, 3).

(5) **Rev. Stat. c. 156.—Payment of wages protected.—Exchange of securities protected.—Certain assignments to be valid.**—Nothing herein contained shall affect *The Act Respecting Wages*, or shall prevent a debtor providing for payment of wages due by him in accordance with the provisions of the said Act. Nor shall anything herein contained affect any payment of money to a creditor, where such creditor by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor. Nor to the substitution in good faith of one security for another security for the same debt as far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt where by reason or on account of the giving of the security, an advance in money is made to the debtor by the creditor, in the *bona fide* belief that the advance will enable the debtor to continue his trade or business, and to pay his debts in full. R. S. O. 1887, c. 124, s. 3 (4); 54 V., c. 20, s. 2.

4. Assignee must reside in the Province.—No person other than a permanent and *bona fide* resident of this Province shall have power to act as assignee under an assignment within the provisions of this Act, made after the 23rd day of March, 1889, nor shall any such assignee have power to appoint a deputy or to delegate his duties as assignee to any person who is not a permanent and *bona fide* resident of this Province; and no charge shall be made or recoverable against the assignor or his estate for any services or other expenses of any such assignee, deputy or delegate of any assignee who is not a permanent and *bona fide* resident of this Province as aforesaid. 52 V., c. 21, s. 1.

5. Form of assignment for general benefit of creditors.—Every assignment made under this Act, for the general benefit of creditors shall be valid and sufficient if it is in the words following, that is to say—all my personal property which may be seized and sold under execution and all my real estate, credits and effects—or if it is in words to the like effect; and an assignment so expressed shall vest in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure, or sale under execution, subject, however, as regards lands, to the provisions of the registry law as to the registration of the assignment. R. S. O. 1887, c. 124, s. 4.

[As to the preferential lien of a landlord, see Cap. 170, sec. 34.]

6. All assignments for general benefit of creditors to be subject to this Act.—Every assignment hereafter executed for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Act, and whether the debtor has or has not included all his real and personal estate, shall vest the estate, whether real or personal or partly real and partly personal, thereby assigned in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned, shall be subject to all the provisions of this Act,

and the provisions of this Act shall apply to the assignee named in such assignment. 58 V., c. 23, s. 5.

7. How claims are to rank where different estates.—If any assignor or assignors executing an assignment under this Act for the general benefit of his or their creditors owes or owe, debts both individually and as a member of a co-partnership, or as a member of different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full. R. S. O. 1887, c. 124, s. 5.

8. Appointment of substituted assignee.—(1) A majority in number and value of the creditors who have proved claims to the amount of \$100 or upwards, may at their discretion substitute for the sheriff, or for an assignee under an assignment to which subsection 3 of section 3 of this Act applies, a person residing in the county in which the debtor resided, or carried on business at the time of the assignment. An assignee may be removed, and another substituted, or an additional assignee appointed by a Judge of the High Court, or of the County Court where the assignment is registered. In case an assignee has died, a new assignee may be appointed by a judge as herein provided. R. S. O., 1887, c. 124, s. 6 (1); 53 V., c. 34, s. 1. (As amended by 4 Edw. VII., c. 10, s. 33.)

(2) Estate to vest in substituted assignee.—Rev. Stat. c. 136.—Where a new or additional assignee is appointed, the estate shall forthwith vest without a conveyance or transfer, and he shall register an affidavit of his appointment in the office in which the original assignment was filed, such an affidavit may also be registered under *The Registry Act*. The registration of the affidavit under *The Registry Act* shall have the same effect as the registration of a conveyance. R. S. O. 1887, c. 124, s. 6 (2).

9. Rights of assignee.—(1) Except as in this section is herein-after provided, the assignee shall have an exclusive right of suing for the rescission of agreements, deeds and instruments or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this Act.

(2) Creditor may proceed in certain cases if assignee refuses.—If at any time a creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors or inspectors, refuses or neglects to take such proceeding, after being duly required so to do, the creditor shall have the right to obtain an order of the Judge authorizing him to take the proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee, as the Judge may prescribe, and thereupon any benefit derived from the proceedings shall to the extent of his claim and full costs, belong exclusively to the creditor instituting the same for his benefit, but if, before such order is granted, the assignee shall signify to the Judge, his readiness to institute the proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall belong to the estate. R. S. O. 1887, c. 124, s. 7.

10. Following proceeds of property fraudulently transferred.—(1) In the case of a gift, conveyance, assignment or transfer of any property, real or personal, which in law is invalid against credit-

ors, if the person to whom the gift, conveyance, assignment or transfer was made shall have sold or disposed of, realized or collected the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the gift, conveyance, transfer, delivery or payment was made, and such right to seize and recover shall belong, not only to an assignee for the general benefit of the creditors of the said debtor, but in case there is no such assignment, shall exist in favour of all creditors of such debtor. 53 V., c. 23, s. 1.

(2) Taking proceeds under execution.—Rev. Stat. c. 78.—

(2) Where there has been no assignment for the benefit of creditors, and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable amongst the creditors under *The Creditors' Relief Act*, or otherwise. 53 V., c. 23, s. 2.

(3) Creditor suing on behalf of himself and other creditors.—Where there has been no assignment for the benefit of creditors, and whether the proceeds realized aforesaid are or are not of a character to be seized under execution, an action may be brought therefor by a creditor (whether an execution creditor or not), on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds available for the general benefit of the creditors. 53 V., c. 23, s. 3.

(4) Protection of innocent purchasers.—This section shall not apply as against innocent purchasers of the property. 53 V., c. 23, s. 4.

11. Assignments to take precedence of judgments and executions.—An assignment for the general benefit of creditors under this Act shall take precedence of attachments of garnishee orders, of judgments and of executions not completely executed by payment, and of orders appointing receivers by way of equitable execution, subject to the lien, if any, of an execution creditor for his costs where there is but one execution in the sheriff's hands, or to the lien, if any, for his costs of the creditor who has the first execution in the sheriff's hands. R. S. O. 1887, c. 124, s. 9; 59 V., c. 31, s. 2. (As amended by 3 Edw. VII., c. 7, s. 29.)

12. Amendment of assignment by judge.—No advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in any assignment under this Act for the general benefit of creditors if the same can be amended or corrected, and any such mistake, defect or imperfection shall be amended by any Judge of the High Court, or of the County Court aforesaid, on application of the assignee or of any creditor of the assignor, on such notice being given to other parties concerned as the Judge shall think reasonable, and the amendment, when made, shall have relation back to the date of the assignment, but so as not to prejudice the rights of innocent purchasers. R. S. O., 1887, c. 24, s. 10; 60 V., c. 3, s. 3.

13. Notice of assignment to be published.—Rev. Stat. c. 148.—(1) No assignment made for the general benefit of creditors under this Act shall be within the operation of *The Act respecting Mortgages and Sales of Personal Property*; but a notice of the assignment shall, as soon as conveniently may be, be published at least once in the *Ontario Gazette* and not less than twice in one newspaper

at the least, having a general circulation in the county in which the property assigned is situate.

(2) **Assignment to be registered.**—Rev. Stat. c. 148.—A counterpart or copy of every such assignment shall also within five days from the execution thereof be registered (together with an affidavit of a witness thereto of the due execution of the assignment or of the due execution of the assignment of which the copy filed purports to be a copy), in the office of the County Court of the county or union of counties where the assignor, if a resident in Ontario, resides at the time of the execution thereof, or if he is not a resident then in the office of the clerk of the County Court of the county or union of counties where the personal property so assigned is or where the principal part thereof (in case the assignment includes property in more counties than one) is at the time of the execution of such assignment; and such clerks shall file all such instruments presented to them respectively for that purpose, and shall endorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all persons interested therein. The said clerks respectively shall number and enter such assignments, and be entitled to the same fees for services in the same manner as if such assignments had been registered under *The Act respecting Mortgages and Sales of Personal Property*. R. S. O. 1887, c. 124, s. 12 (1, 2.)

(3) **Where assignment to be filed in certain districts and in Haliburton.**—In the Districts of Muskoka, Parry Sound, Nipissing, Algoma, Manitoulin, Thunder Bay and Rainy River, and in any other district which may be hereafter formed, and in the Provisional County of Haliburton the counterpart or copy of the assignment shall be filed in the same office and within the same time respectively as by the law at the time of the assignment in force mortgages and bills of sale of personal property are required to be filed in such districts, and provisional county respectively, and the clerk in whose office the same is filed shall perform the like duties and be entitled to be paid the like fees as clerks acting under the preceding subsection. 59 V., c. 31, s. 1.

14. Penalty for neglecting publication or registration.—

(1) If the said notice is not published in the regular number of the *Ontario Gazette*, and of such newspaper as aforesaid, which shall respectively be issued first after five days from the execution of the assignment by the assignor, or if the assignment is not registered as aforesaid within five days from the execution thereof, the assignor shall be liable to a penalty of \$25 for each and every day which shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published; and a like penalty for each any every day which shall pass after the expiration of five days from the execution of the assignment by the assignor until the same shall have been registered.

(2) The assignee shall be subject to a like penalty for each and every day which shall pass after the expiration of five days from the delivery of the assignment to him, or of five days after his assent thereto. The burden of proving the time of such delivery or assent shall be upon the assignee.

(3) Such penalties may be recovered summarily before a Judge of the High Court, or of the County Court of the county in which the assignment ought to be published or registered; one-half of the pen-

alty shall go to the party suing, and the other half for the benefit of the estate of the assignor.

(4) **Liability of sheriff.**—In case of an assignment to the sheriff, he shall not be liable for any of the penalties imposed in this section, unless he has been paid or tendered the cost of advertising and registering the assignment, nor shall he be compelled to act under the assignment until his costs in that behalf are paid or tendered to him. R. S. O. 1887, c. 124, s. 13.

15. Compelling publication and registration.—In case the assignment is not registered, and notice thereof published, an application may be made by any one interested in the assignment to a Judge of the High Court, or of the County Court aforesaid, to compel the registration of the assignment and publication of such notice; and the Judge shall make his order in that behalf, and with or without costs, or upon the payment of costs by such person as he may in his discretion direct to pay the same. R. S. O. 1887, c. 124, s. 14.

16. Assignment not invalidated by omission to publish, etc.—The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment. R. S. O., 1887, c. 124, s. 15.

17. Assignee to call meeting of creditors.—It shall be the duty of the assignee immediately to inform himself, by reference to the debtor and his records of account, of the names and residences of the debtor's creditors, and within five days from the date of assignment to convene a meeting of the creditors for the appointment of inspectors and the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him, a circular calling a meeting of creditors to be held in his office or some other convenient place to be named in the notices not later than twelve days after the mailing of such notice, and by advertisement in the Ontario Gazette; and all other meetings to be held shall be called in like manner. R. S. O. 1887, c. 124, s. 16.

18. Meeting of creditors by request of majority thereof.—In case of a request in writing signed by a majority of the creditors having claims duly proved of \$100 and upwards, computed according to the provisions of section 20 of this Act, it shall be the duty of the assignee within two days after receiving such request, to call a meeting of the creditors at a time not later than twelve days after the assignee receives the request. In case of default the assignee shall be liable to a penalty of \$25 for every day after the expiration of the time limited for the calling of the meeting until the meeting is called.

(2) **Judge to give directions in case creditors do not attend.**—In case a sufficient number of creditors do not attend the meeting mentioned in section 17 of this Act, or fail to give directions with reference to the disposal of the estate, the Judge of the County Court may give all necessary directions in that behalf. R. S. O. 1887, c. 124, s. 17.

19. Voting at meeting.—At any meeting of creditors the creditors may vote in person, or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim stating the amount and nature thereof. R. S. O. 1887, c. 124, s. 18.

20. Scale of votes.—(1) Subject to the provisions of section 8, all questions discussed at meetings of creditors shall be decided by

the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:

For every claim of or over \$100, and not exceeding \$200 ..	1 vote.
" " " \$200 " " \$500 ..	2 votes.
" " " \$500 " " \$1000 ..	3 votes.
" additional \$1,000, or fraction thereof ..	1 vote.

(2) **Upon claims acquired after assignment.**—No person shall be entitled to vote on a claim acquired after the assignment unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(3) **Casting vote.**—In case of a tie the assignee, or if there are two assignees, then the assignee nominated for that purpose by creditors, or by the Judge, if none has been nominated by the creditors, shall have a casting vote.

(4) **Creditors to value securities.**—Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate as soon as the assignee has realized such security; and in such case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate.

(5) **Right to revalue in certain cases.**—If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being his security for the payment thereof; but after the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim. R. S. O. 1887, c. 124, s. 19.

(6) **When creditor holding security fails to value same.**—In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, the Judge of the County Court of the county wherein the debtor at the time of making the assignment resided or carried on business, may, upon summary application by the assignee or by any other person interested in the debtor's estate of which application three days' notice shall be given to such claimant, order that, unless a specified value shall be placed on such security and notified in writing to the assignee within a time to be limited by the order, such claimant shall, in respect of the claim, or the part thereof for which the security is held, in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate; and if a specified value is not placed on such security, and notified in writing to the assignee according to the exigency of the said order, or within such further time as the said Judge may by subsequent order allow, the said claim, or the said part, as the case may be, shall be wholly barred as against such es-

tate but without prejudice to the liability of the debtor therefor. 59 V., c. 31, s. 3.

21. Proof of claim.—(1) Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim proved by affidavit and such vouchers as the nature of the case admits of.

(2) **Limiting time for proof of claim.**—In case a person claiming to be entitled to rank on the estate assigned, does not within a reasonable time after receiving notice of the assignment and of the name and address of the assignee, furnish to the assignee satisfactory proofs of his claim as provided by this and the preceding sections of this Act, the Judge of the County Court of the county wherein the debtor at the time of making the assignment resided or carried on business, may, upon a summary application by the assignee or by any other person interested in the debtor's estate (of which application at least three days' notice shall be given to the person alleged to have made default in proving a claim as aforesaid), order that unless the claim can be proved to the satisfaction of the Judge within a time to be limited by the order, the person so making default shall no longer be deemed a creditor of the estate assigned, and shall be wholly barred of any right to share in the proceeds thereof; and if the claim is not so proved within the time so limited, or within such further time as the said Judge may by subsequent order allow, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor.

(3) **Not to interfere with Rev. Stat. c. 129.**—The preceding subsection is not intended to interfere with the protection afforded to assignees, by section 38 of *The Trustee Act*.

(4) **Creditor may prove claim not due.**—A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due. R. S. O. 1887, c. 124, s. 20 (1-4.)

22. Contestation of claim.—(1) At any time after the assignee receives from any person claiming to be entitled to rank on the estate, proof of his claim, notice of contestation of the claim may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a Judge of the County Court of the county in which the assignment is registered may on application allow, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action or summons in case the action is brought in a Division Court shall be served on the assignee; and in default of such action being brought and writ or summons served within the time aforesaid, the claim to rank on the estate shall be forever barred.

(2) The notice by the assignee shall contain the name and place of business of one of the solicitors of the Supreme Court of Judicature for Ontario, upon whom service of the writ or summons may be made; and service upon such solicitor shall be deemed sufficient service of the writ. R. S. O. 1887, c. 124, s. 20 (5).

23. Procedure where assignee is satisfied with proof of claim and debtor desires to dispute same.—(1) In case the assignee is satisfied with the proof adduced in support of a claim, but the debtor disputes the same, such debtor shall do so by notice in

writing to the assignee, stating the grounds upon which he disputes the claim; and such notice shall be given within ten days of such debtor's being notified in writing by the assignee that he is satisfied with the proof adduced as aforesaid, and not afterwards unless by special leave of the said Judge.

(2) If upon receiving such notice of dispute the assignee does not deem it proper to require the claimant to bring an action to establish his claim he shall notify the debtor in writing of this fact, and the debtor may thereupon, and within ten days of his receiving such notice, apply to the said Judge for an order requiring the assignee to serve a notice of contestation. The Judge shall only make such order if after notice to the assignee the Judge is of opinion that there are good grounds for contesting the claim. In case the debtor does not make an application as aforesaid the decision of the assignee shall as against him be final and conclusive.

(3) If upon the application the claimant consents in writing, the Judge may, in a summary manner, decide the question of the validity of the claim.

(4) If an action is brought by the claimant against the assignee the debtor may intervene at the trial, either personally or by counsel, for the purpose of calling and examining or cross-examining witnesses. 59 V., c. 31, s. 4.

24. Assets not to be removed out of the Province and moneys to be deposited in a bank.—(1) No property or assets of an estate assigned under the provisions of this Act shall be removed out of the Province without the order of the Judge of the County Court of the county in which the assignment is registered, and the proceeds of the sale of any such property or assets, and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of such Judge, except in payment of dividends and other charges incidental to the winding up of the estate.

(2) **Penalty.**—Any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be liable to a penalty of \$500, which may be recovered summarily before a Judge of the High Court or before the Judge of the County Court of the county in which the assignment is required to be registered; and one-half of the said penalty shall go to the person suing therefor, and the other half shall belong to the said estate; but in default of payment of the said penalty and all costs which may be incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be disqualified from acting as assignee of any estate while such default continues. 52 V., c. 21, s. 2.

(3) **Application of section limited.**—This section shall not apply to any assignment executed before the 23rd day of March, 1889, or to any proceedings thereunder. 52 V., c. 21, s. 3.

25. Accounts to be kept accessible.—Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare, and keep constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate. R. S. O. 1887, c. 124, s. 21.

26. Set-off.—The law of set-off shall apply to all claims made against the estate and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim for set-off shall be affected by the provisions respecting frauds or fraudulent preferences of this or any other Act. R. S. O. 1887, c. 124, s. 23.

27. Affidavits.—Any affidavit authorized, or required, under this Act may be sworn before any person authorized to administer affidavits in the High Court, or before a Justice of the Peace, or, if sworn out of Ontario, before a Notary Public or a commissioner authorized to administer affidavits in Ontario. R. S. O. 1887, c. 124, s. 24. (As amended by 4 Edw. VII., c. 10, s. 34.)

28. Dividends when to be paid.—As large a dividend as can with safety be paid, shall be paid by every assignee under this Act within twelve months from the date of any assignment made thereunder, and earlier if required by the inspectors; and thereafter a further dividend shall be paid every six months, and more frequently if required by the inspectors until the estate is wound up and disposed of. 59 V., c. 31, s. 5.

29. Notice of dividend sheet.—So soon as a dividend sheet is prepared, notice thereof shall be given by letter posted to each creditor, inclosing an abstract of receipts and disbursements, shewing what interest has been received by the assignee, for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the day of mailing such notice, abstract and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid. R. S. O. 1887, c. 124, s. 22.

30. Distributing moneys and determining claims as provided by Rev. Stat. c. 78.—(1) The assignee may, if he deems it advisable so to do, take the proceedings authorized by section 32 or *The Creditors' Relief Act* to be taken by a sheriff, and in that case sections 32 and 33 of the said Act shall apply to proceedings for the distribution of moneys and determination of claims arising under an assignment made under this Act, with the substitution of "assignee" for "sheriff" where it occurs in said section 32; and the substitution of "according to law" for "as directed by this Act," where these words occur in said section 32; but this section shall not be construed to relieve the assignee from mailing to each creditor the abstract and other information required by section 29 of this Act to be sent to creditors, so far as the same is not contained in the list sent by him under section 32 aforesaid.

(2) The Judge of the County Court of the county wherein the debtor at the time of the assignment resided or carried on business shall be the Judge to whom applications under this section shall be made. 59 V., c. 31, s. 6.

31. Remuneration of assignee.—The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose after the first dividend sheet has been prepared, or by the inspectors, in case of the creditors failing to provide therefor, subject to the review of the County Court of the county in which the assignment is registered or the Judge thereof, if complained of by the assignee or any of the creditors. R. S. O. 1887, c. 124, s. 11 (1).

32. Where remuneration not fixed before the final dividend.—In case the remuneration of the assignee has not been fixed under the preceding subsection before the final dividend, the assignee may insert in the final dividend sheet, and retain as his remuneration, a sum not exceeding five per cent. of the cash receipts, subject to review by the Court or Judge as hereinbefore provided; but no application by the assignee to review the said allowance shall be entertained, unless the question of his remuneration, previous to the preparation of the final dividend sheet has been brought before a meeting of creditors competent to decide the same. 59 V., c. 31, s. 8.

33. Remuneration of inspectors.—No assignee shall make any payment or allowance to an inspector beyond his actual and necessary travelling expenses in and about his duties as inspector, except under the authority of a resolution of the creditors passed at a meeting regularly called, fixing the amount thereof, and in the notice calling the meeting the fixing of the remuneration of the inspectors shall be specially mentioned as one of the subjects to be brought before the meeting. No inspector shall be allowed more than four dollars a day besides actual travelling expenses, but may be allowed less. 59 V., c. 31, s. 7.

34. Examination of assignor or employees.—Where there has been an assignment for the benefit of creditors the assignee, or assignees, upon resolution passed by a majority vote of the creditors present or represented at a meeting of the creditors of the assignor regularly called, or upon the written request or resolution of the majority of the inspectors of the estate, may without an order examine the assignor or any person who is or has been an agent, clerk, servant, officer or employee of any kind of the assignor, upon oath before a master or local master or a special examiner of the Supreme Court of Judicature, or before a local registrar or deputy clerk of the crown of the High Court, or before the Judge of the County Court of the county within which such assignor resides, or before any official referee, or may by the order of the Court or a Judge examine the assignor on oath before any other person to be specially named in such order, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability and as to any and what debts are owing to him. 58 V., c. 23, s. 6; 59 V., c. 31, s. 9.

35. Procedure upon examination of an assignor.—The rules and procedure from time to time in force in the High Court of Justice for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignee were a judgment debtor. 59 V., c. 23, s. 11.

36. When assignor does not attend or refuses to answer questions.—In case such assignor does not attend as required by the said appointment, or appointment and order, as the case may be, and does not allege a sufficient excuse for not attending, or if attending, refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that such assignor has concealed

or made away with his property in order to defeat or defraud his creditors or any of them, the Court or Judge may order the assignor to be committed to the common goal of the county in which he resides, for any term not exceeding twelve months. 58 V., c. 23, s. 10.

37. Service of appointment.—(1) Any person liable to be examined under section 34 may be served with an appointment signed by the Judge or officer, or a copy thereof, and where the examination is to take place under an order, also with a copy of the order; such service to be made at least 48 hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness. 58 V., c. 23, s. 8.

(2) **Conduct of examination.**—The examination shall be conducted in the same manner as in the case of an oral examination of an opposite party. 58 V., c. 23, s. 8.

38. Compelling attendance and production of books.—Any person liable to be examined under section 34 may be compelled to attend and testify and to produce books and documents, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the High Court of Justice. 58 V., c. 23, s. 7.

39. Calling upon persons having information as to assignor's affairs to give evidence and produce documents, etc.—

(1) In case any person has or is believed or suspected to have in his possession or power any book, document, or paper of any kind relating in whole or in part to the debtor, his dealings or property, such person may, upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor exclusive of such person (if he is a creditor) or upon the written request or resolution of the majority of the inspectors of the estate, be required by the assignee to produce such statement or statements for the information of such assignee.

(2) In case such person fails to produce the said book, document or other paper within four days of his being served with a copy of the said resolution and a request of the assignee in that behalf, or in case the assignee or the majority of the inspectors is or are not satisfied that full production has been made, the assignee may without an order examine the said person before any of the officers mentioned in section 34 of this Act touching any book, document or other paper which he is supposed to have received.

(3) Any such person may be compelled to attend and testify, and to produce upon his examination any book, document or other paper which under this section he is liable to produce in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined as in the case of a witness in an action in the High Court of Justice. 59 V., c. 31, s. 10.

NEW BRUNSWICK.

R. S. N. B., 1903, CHAP. 140.

STATUTE OF FRAUDS.

1. Certain contracts unenforceable unless in writing signed by the party to be charged, or agent.—No action shall be brought to charge an executor or administrator upon any special promise to answer damages out of his own estate; or to charge any person upon any special promise to answer for the debt, default, or miscarriage of another; or to charge any person upon any agreement made upon consideration of marriage, or upon any contract, or sale of lands, or of any interest therein, or upon any agreement that is not to be performed within one year from the making thereof; unless the agreement upon which such action shall be brought, or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or some other person authorized by him. C. S. c. 76, s. 1.

2. Consideration for promise to answer for debt, etc., of another need not appear by writing.—No special promise to be made by any person after the ninth day of April, A. D. 1860, to answer for the debt, default, or miscarriage, of another, made to being in writing and signed by the party to be charged therewith, or some person by him thereunto lawfully authorized, shall be deemed invalid to support an action, suit, or other proceeding, to charge the person by whom such promise shall have been made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document. C. S. c. 76, s. 2.

3. Promise to answer for debt, etc., of another to firm, or for debt of firm, to cease upon change in firm.—No promise to answer for the debt, default, or miscarriage, of another, made to a firm consisting of two or more persons, or to a single person trading under the name of a firm, and no promise to answer for the debt, default or miscarriage of a firm consisting of two or more persons, or of a single person trading under the name of a firm, shall be binding on the person making such promise in respect of any thing done, or omitted to be done, after a change shall have taken place in the constitution of the firm, by the increase or the diminution of the members thereof, unless the intention of the parties that such promise shall continue to be binding, notwithstanding such change, shall appear either by express stipulation or by necessary implication from the nature of the firm, or otherwise. C. S. c. 76, s. 3.

4. Contract for sale of goods, etc., for \$40 or upwards not enforceable unless in writing, etc.—No contract for the sale of any goods, wares, or merchandise, for the price of forty dollars or upwards, shall be good unless the buyer accept and receive part of the goods so sold, or give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing of the bargain be made and signed by the party to be charged thereby, or his agent, whether such goods are actually made or ready for delivery, or are intended to be made or delivered, or both, at some future time, or not. C. S. c. 76, s. 4.

5. Representation as to character, credit, etc., to be in writing.—No action shall be brought to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealing of any other person, to enable such other person to obtain money or goods upon credit, unless such representation or assurance be made in writing, signed by the party to be charged therewith. C. S. c. 76, s. 5.

6. Promise to pay debt contracted during infancy to be in writing.—No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification be made by some writing signed by the party to be charged therewith. C. S. c. 76, s. 6.

7. Leases exceeding term of 3 years to be in writing.—All leases, estates, or other interests in lands, not put in writing, and signed by the parties, or their agents thereunto lawfully authorized by writing, shall have the force of leases or estates at will only, except leases not exceeding the term of three years. C. S. c. 76, s. 7.

8. Assignment or grant of interest in lands to be in writing.—No interest in lands shall be assigned, granted, or surrendered, unless it be by deed or note in writing, signed by the party assigning, granting, or surrendering the same, or by his agent thereunto lawfully authorized by writing, or by act and operation of law. C. S. c. 76, s. 8.

9. Declaration of trust in lands to be in writing.—Exceptions.—No declaration or creation of any trust in lands shall be valid, unless it be in writing signed by the party entitled to declare or create the trust, or by his last will, except trusts arising or resulting by implication or construction of law, or which may be transferred or extinguished by act or operation of law. C. S. c. 76, s. 9.

10. Assignment of trust to be in writing.—No grant or assignment of any trust shall be valid unless it be in writing, signed by the party granting or assigning the same, or by his last will. C. S. c. 76, s. 10.

11. Execution to bind goods when delivered to Sheriff to be executed.—No writ of execution shall bind the goods of the party against whom it is sued forth, but from the time it is delivered to the Sheriff to be executed, who shall indorse thereon the day of the month and year he received it. C. S. c. 76, s. 11.

12. Heir not personally chargeable by trust made assets in his hands.—No heir who shall become chargeable by any trust made assets in his hands, shall, by reason of any pleading or judgment, be chargeable to pay the condemnation out of his own estate; the execution shall be issued against the estate so made assets, in whose hands soever it shall come after the writ issued, in the same manner as by the Common Law. C. S. c. 76, s. 12.

R. S. N. B., 1903, CHAP. 141.

RESPECTING ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS.

1. Confession of judgment, etc., given by insolvent person voluntarily or by collusion to defeat creditors, to be void.—In case any person, being at the time in insolvent circumstances, or unable to pay his debts in full, or knowing himself to be on the eve of insolvency, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, to defeat or delay his creditors wholly or in part, or with intent thereby to give one or more of the creditors of any such person a preference over his other creditors, or over any one or more of such creditors, every such confession, *cognovit actionem*, or warrant of attorney to confess judgment, shall be deemed and taken to be null and void as against the creditors of the party giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution. 58 V., c. 6, s. 1.

2. Gift, conveyance, etc., by insolvent person, with intent to defeat creditors, to be void.—(1) Subject to the provisions of section 3 of this Chapter, every gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, bonds, notes, or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency with intent to defeat, delay or prejudice his creditors, or any one or more of them, shall, as against the creditor or creditors injured, delayed or prejudiced, be utterly void.

(2) **Gift, conveyance, etc., by insolvent person to creditor with intent to give him an unjust preference, to be void.**—Subject also to the provisions of section 3 of this Chapter, every gift, conveyance, assignment or transfer, delivery over, or payment of goods, chattels or effects, or of bills, notes or securities, or of shares, dividends, premiums or bonus in any bank, company or corporation, or of any other property, real or personal, made by a person at a time when he is in insolvent circumstances, or is unable to pay his debts in full, or knows that he is on the eve of insolvency, to or for a creditor, with intent to give such creditor an unjust preference over his other creditors, or over any one or more of them, shall, as against the creditor or creditors injured, delayed, prejudiced or postponed, be utterly void.

(3) **If transaction with creditor has effect of giving preference, certain presumption if suit brought within 60 days.**—Subject to the provisions of said section 3 of this Chapter, if such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor, or over any one or more of them, it shall, in or with respect to any suit or proceeding, which, within sixty days thereafter, is brought, had or taken to impeach or set aside such transaction, be presumed to have been made with the intent aforesaid, and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure.

(4) **If transaction with creditor has effect of giving preference, certain presumption if assignment for creditors made within 60 days.**—(4) Subject to the provisions of said section 3, if such transaction with or for a creditor has the effect of giving that creditor a preference over the other creditors of the debtor, or over any one or more of them, it shall, if the debtor within sixty days after the transaction makes an assignment for the benefit of his creditors, be presumed to have been made with the intent aforesaid, and to be an unjust preference within the meaning hereof, whether the same be made voluntarily or under pressure.

(5) **Gift, conveyance, etc., to surety or indorser, to be void where void if given to creditor.**—Where a gift, conveyance, assignment or transfer, delivery over or payment of goods, chattels or effects, or of bills, notes or securities, or of shares, dividends, premiums or bonus, in any bank, company or corporation, or of any other property, real or personal, is made to or for any surety or indorser of any promissory note or bill of exchange, who would upon payment by him of the debt, promissory note, or bill of exchange, in respect of which such suretyship was entered into, or such indorsement given, become a creditor of the person giving the preference within the meaning of the foregoing sub-section, the same shall be void in cases where it would be void if given to or for a creditor. 58 V., c. 6, s. 2.

3. Preceding section not to apply to assignment for benefit of creditors, nor to "bona fide" sale, etc., in the course of trade to innocent purchaser; nor to "bona fide" conveyance, etc., for present "bona fide" payment, etc.—(1) Nothing in the preceding section shall apply to any assignment made to the Sheriff of the county in which the debtor resides or carries on business, or to another assignee resident within the Province of New Brunswick, with the consent of the creditors, as hereinafter provided, for the purpose of paying ratably and proportionately, and without preference or priority, all the creditors of the debtor their just debts; nor to any *bona fide* sale or payment made in the ordinary course of trade or calling to innocent purchasers or parties, nor to any payment of money to a creditor, nor to any *bona fide* gift, conveyance, assignment, transfer, or delivery over of any goods, securities or property of any kind as above mentioned, which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money or property to or for the debtor; nor to any *bona fide* sale and delivery of goods or other property; provided that the money paid, or the goods or other property sold or delivered, bear a fair and reasonable relative value to the consideration therefor. 58 V., c. 6, s. 3 (1).

(2) **Payment to creditor for goods purchased from debtor to be void as respects creditor.**—In case of a valid sale of goods, securities or property, and payment or transfer of the consideration or part thereof, by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer by the debtor personally and directly, the payment or transfer, even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. 68 V., c. 6, s. 3 (a); 59 V., c. 36, s. 1.

(3) **Assignment for benefit of creditors to be void as against subsequent assignment under Chapter.**—Every assign-

ment for the general benefit of creditors, which is not void under section 2 of this Chapter, but is not made to the Sheriff nor to any other person with the prescribed consent of creditors, shall be void as against a subsequent assignment which is in conformity with this Chapter, and shall be subject in other respects to the provisions of this Chapter, until and unless a subsequent assignment is executed in accordance with this Chapter. 58 V., c. 6, s. 3 (2)

(4) **Effect of assignment for benefit*of creditors.**—Every assignment hereafter executed for the general benefit of creditors, whether the assignment is or is not expressed to be made under or in pursuance of this Chapter, and whether the debtor has or has not included all his real estate and personal estate, shall vest the estate, whether real or personal, or part real and part personal thereby assigned, in the assignee therein named for the general benefit of creditors, and such assignment and the property thereby assigned shall be subject to all the provisions of this Chapter, and the provisions of this Chapter shall apply to the assignee named thereunder. 60 V., c. 39, s. 1.

(5) **Restoration of security to creditor given up in consideration of void payment.**—In case a payment has been made which is void under this Chapter, and any valuable security was given up in consideration of the payment, the creditor shall be entitled to have the security restored or its value made good to him before or as a condition of the return of the payment. 58 V., c. 6, s. 3 (3).

(6) **Chap. 149, protecting wage earners, not affected.—Payment to creditor giving up security not affected.—Validity of substitution of security for another.—Validity of security for debt, where further advance made.**—Nothing herein contained is to affect Chapter 149, respecting the protection of wage-earners, or to prevent a debtor providing for payment of wages due by him, in accordance with the provisions of the said Chapter, nor shall anything herein contained affect any payment of money to a creditor where such creditor, by reason or on account of such payment, has lost or been deprived of, or has, in good faith, given up any valuable security which he held for the payment of the debt so paid, unless the valuable security is restored to the creditor, nor to the substitution in good faith of one security for another security for the same debt, so far as the debtor's estate is not thereby lessened in value to the other creditors. Nor shall anything herein contained invalidate a security given to a creditor for a pre-existing debt, where by reason or on account of the giving of the security, an advance of money is made to the debtor by the creditor in the *bona fide* belief that the advance will enable the debtor to continue his trade or business, and to pay his debts in full. 58 V., c. 6, s. 3 (4).

(7) **Assignment to person other than Sheriff.**—The debtor may, in the first place, with the consent of a majority of his creditors having claims of one hundred dollars and upwards, computed according to the provisions of section 19, make a general assignment for the benefit of his creditors to some person other than the Sheriff, and residing in this Province. 58 V., c. 6, s. 3 (5).

(8) **Assignee to be resident of Province.**—No person other than a permanent and *bona fide* resident of this Province shall have power to act as assignee under an assignment within the provisions of this Chapter, nor shall any such assignee have power to appoint a deputy or to delegate his duties as assignee to any person who

is not a permanent and *bona fide* resident of this Province; and no charge shall be made or recoverable against the assignor or his estate, for any services or other expenses of any such assignee, deputy, or delegate of any assignee, who is not a permanent and *bona fide* resident of this Province as aforesaid. 58 V., c. 6, s. 3, (6).

4. Sufficiency of certain words to constitute assignment.—

Effect of assignment.—Every assignment made under this Chapter for the general benefit of creditors shall be valid and sufficient if it is in the words following, that is to say: “All my personal property which may be seized and sold under execution, and all my real estate, credits and effects,” or if it is in words to like effect; and an assignment so executed shall vest in the assignee all the real and personal estate, rights, property, credits and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution; subject however, as regards lands, to the provisions of the registry law as to the registration of conveyances. 58 V., c. 6, s. 4.

5. Ranking of private and partnership debts.—If any assignor or assignors, executing an assignment under this Chapter, for the general benefit of his or their creditors, owes or owe debts, both individually, and as a member of a co-partnership, or as a member of two different co-partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full. 58 V., c. 6, s. 5.

6. Change of assignee by creditors.—Removal or appointment of additional assignee.—(1) A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards, may at their discretion substitute for the Sheriff, or for an assignee under an assignment to which subsection 3 of section 3 of this Chapter applies, a person residing in the county in which the debtor resided, or carried on business at the time of the assignment. An assignee may also be removed and another assignee may be substituted, or an additional assignee may be appointed by a Judge of the Supreme Court sitting in Equity, or of the County Court of the county where the assignment is registered.

(2) **Vesting of estate in new assignee.**—Where a new assignee is appointed the estate shall forthwith vest in him without a conveyance or transfer. The new assignee may register an affidavit of his appointment in the office in which the original assignment was filed, and such an affidavit may also be registered under *The Registry Act*, Chapter 151 of these Consolidated Statutes. The registration of the affidavit under said Chapter, shall have the same effect as the registration of a conveyance. 58 V., c. 6, s. 6.

7. Exclusive right of assignee to sue for rescission of agreements, etc.—(1) Save as provided in the next succeeding subsection, the assignee shall have an exclusive right of suing for the rescission of agreements, deeds, and instruments or other transactions made or entered into in fraud of creditors, or made or entered into in violation of this Chapter.

(2) **Authority to creditor to take proceeding in name of assignee.**—If at any time any creditor desires to cause any proceeding to be taken which in his opinion would be for the benefit of the estate, and the assignee, under the authority of the creditors

or inspectors, refuses or neglects to take such proceeding after being duly required so to do, the creditor shall have the right to obtain an order of a Judge of the Supreme Court sitting in Equity authorizing him to take the proceeding in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee as the Judge may prescribe, and thereupon any benefit derived from the proceeding shall belong exclusively to the creditor instituting the same for his benefit; but if before such order is granted the assignee shall signify to the Judge his readiness to institute the proceedings for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceedings, if instituted within such time, shall appertain to the estate. 58 V., c. 6, s. 7.

8. Right to follow proceeds of property.—If the person to whom any gift, conveyance, assignment, transfer, delivery or payment, as in section 2 of this Chapter is mentioned, has been made, shall have sold or disposed of the property which was the subject of such gift, conveyance, assignment, transfer, delivery or payment, or any part thereof, the moneys or other proceeds realized therefor may be seized and recovered in any action under the last preceding section as fully and effectually as the property if still remaining in the possession or control of such person could have been seized or recovered. 58 V., c. 6, s. 8.

9. Creditors' assignment to cut out judgments, and unexecuted executions.—An assignment for the general benefit of creditors under this Chapter shall take precedence of all judgments and of all executions not completely executed by payment, subject to the claims of any execution creditors for the fees and expenses of the Sheriff or other officer incurred on such executions prior to the assignment. 58 V., c. 6, s. 9.

10. Amendment of mistake, etc., in assignment for creditors.—Relation back of amendment.—No advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in any assignment under this Chapter for the general benefit of creditors if the same can be amended or corrected, and if there be any mistake, defect or imperfection therein, the same shall be amended by any Judge of the Supreme Court sitting in Equity, or of the County Court aforesaid, on application of any creditor of the assignor or of the assignee, on such notice being given to other parties concerned as the Judge shall think reasonable, and the amendment when made, shall have relation back to the date of the said assignment. 58 V., c. 6, s. 10.

11. Remuneration to assignee.—(1) The assignee shall receive such remuneration as shall be voted to him by the creditors at any meeting called for the purpose, or by the inspectors in case of the creditors failing to provide therefor, subject to the review of the County Court of the county in which the assignment is registered, or the Judge thereof, if complained of by the assignee or any of the creditors. 58 V., c. 6, s. 11 (1), 60 V., c. 39, s. 2.

(2) In case no remuneration is voted to the assignee by the creditors or the inspectors, the amount shall be fixed by the said Judge. 58 V., c. 6, s. 11, (2).

12. Assignment not within "Bills of Sale Act," but notice thereof to be published.—(1) No assignment for the general benefit of the creditors under this Chapter shall be within the operation of *The Bills of Sale Act*, Chapter 142 of these Consolidated

Statutes, but a notice of the assignment shall, as soon as conveniently may be, be published at least once in the Royal Gazette, and in one newspaper at least, having a general circulation in the county in which the property assigned is situate (if any newspaper is published in the county), not less than twice.

(2) **Counterpart, etc., of assignment, with affidavit of execution, to be registered.—Where assignment to be registered.—Duty of registrar.—Registrar's fees.**—A counterpart or copy of every such assignment shall also, within five days from the execution thereof, be registered (together with an affidavit of a witness thereto of the due execution of the assignment, or of the due execution of the assignment of which the copy filed purports to be a copy), in the office of the registrar of deeds of the county where the assignor, if a resident in New Brunswick, resides at the time of the execution thereof, or, if he is not a resident, then in the office of the registrar of deeds in the county where the personal property so assigned is, or where the principal part thereof (in case the same includes property in more counties than one) is at the time of the execution of the assignment, and such registrars shall file all such instruments presented to them respectively for that purpose, and shall indorse thereon the time of receiving the same in their respective offices, and the same shall be kept there for the inspection of all parties interested therein. The said registrars respectively shall number and enter such assignments and be entitled to the same fees for services in the same manner as if such assignments had been registered under Chapter 142 of these Consolidated Statutes. 58 V., c. 6, s. 12.

13. Penalty to assignee failing to publish or register assignment.—Recovery of penalty.—(1) If the said notice is not published in the regular number of the Royal Gazette, and such newspaper as aforesaid, not later than the numbers thereof which shall respectively be issued first after five days from the execution of the assignment, by the assignor, or if the assignment is not registered as aforesaid within five days from the execution thereof, the assignor shall be liable to a penalty of twenty-five dollars for each and every day which shall pass after the issue of the number of the newspaper in which the notice should have appeared until the same shall have been published, and a like penalty for each and every day which shall pass after the expiration of five days from the execution of the assignment by the assignor until the same shall be registered. Such penalties may, subject to the provisions of sub-section 5 of this section, be recovered with costs on complaint of any person under the provision of Chapter 123 of these Consolidated Statutes, respecting summary convictions, and half of penalty when recovered shall belong to the complainant. 60 V., c. 39, s. 3, *am.*

(2) **Penalty to assignee failing to publish or register assignment.**—The assignee shall be subject to a like penalty for each and every day which shall pass after the expiration of five days from the delivery of the assignment to him, or of five days after his assent thereto; the burthen of proving the day of such delivery or assent being upon the assignee.

(3) The penalties provided by sub-section (2) may, subject to the provisions of sub-section 5 of this section, be recovered by action of debt in any Court of competent jurisdiction at the suit of any person suing for the same; one half of the penalty shall go to

the party suing, and the other half for the benefit of the estate of the assignor.

(4) **Liability of Sheriff assignee to penalty.**—In case of an assignment to the Sheriff, he shall not be liable for any of the penalties imposed in this section unless he is paid or tendered the cost of advertising and registering the assignment, nor shall he be compelled to act under the assignment until the costs in that behalf are paid or tendered to him. 58 V., c. 6, s. 13.

(5) **Fiat of Attorney-General authorizing action against Sheriff for penalty.**—Before any action shall be brought against any Sheriff to recover any penalties imposed under this section, the fiat of the Attorney-General shall be obtained authorizing such suit, and in no case shall suit be brought for any such penalty after the expiration of three months from the default in respect of which such penalty is recoverable.

14. Order of Judge to compel publication of notice of assignment, etc.—In case the assignment be not registered and notice thereof published, and application may be made by any one interested in the assignment to a Judge of the Supreme Court sitting in Equity, or of the County Court aforesaid, to compel the publication and registration thereof, and the Judge shall make his order in that behalf, and with or without costs, or upon the payment of costs by such person as he may in his discretion direct to pay the same. 58 V., c. 6, s. 14.

15. Assignment not invalidated by omission to publish, etc.—The omission to publish or register as aforesaid, or any irregularity to publication or registration, shall not invalidate the assignment. 58 V., c. 6, s. 15.

16. Calling off meeting of creditors.—Calling of other meetings.—It shall be the duty of the assignee to immediately inform himself, by reference to the debtor and his books of account, of the names and residences of the debtor and creditors, and within five days from the date of the assignment to call a meeting of the creditors for the appointment of inspectors, and the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him, a circular calling a meeting of creditors to be held in his office, or other convenient place to be named in the notices, not later than twelve days after the mailing of such notice and by advertisement in the Royal Gazette; and all other meetings to be held shall be called in like manner, except that the notice calling any subsequent meeting need not be registered; nor need notices of such subsequent meetings be mailed to any creditor barred of right to share in the estate under the provisions of sub-section 2 of section 21 of this Chapter. 58 V., c. 6, s. 16, *am*; 60 V., c. 39, s. 4, *am*.

17. Calling of meeting at request of creditors.—(1) In case of a request in writing signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards, computed according to the provisions of section 19 of this Chapter, it shall be the duty of the assignee, two days after receiving such request, to call a meeting of the creditors, at a time not later than twelve days after the assignee receives the request. In case of default, the assignee shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time for the calling of the meeting until the meeting is called. 58 V., c. 6, s. 17 (1).

(2) **When directions by Judge may be given as to disposal of estate.**—In case the creditors fail to give directions with reference to the disposal of the estate, any Judge of the Supreme Court or of any County Court may give all the necessary directions in that behalf. 60 V., c. 39, s. 7.

(3) **Estate to be disposed of by tender or public auction unless creditors otherwise order.**—In no case shall the assignee dispose of the estate or any part thereof, otherwise than by tender or public auction, except in pursuance of a resolution of the majority in number and value of the creditors having claims duly proved, and present at the first meeting or represented thereat by proxy, or with the approval of any such Judge as aforesaid and upon an order for that purpose, made with or without notice, as the Judge may deem requisite. 60 V., c. 39, s. 7.

(4) **Continuation of business by assignee.**—In the event of the assignee deeming it to be in the interest of the estate to continue for a time any business carried on by the assignor, he may upon petition and affidavit of the facts, apply to any such Judge for an order to permit him to continue such business for such time, not later than the day of the first meeting of the creditors, and such Judge upon being satisfied by evidence under oath, or by affidavit, that the continuance of such business is in the interests of the estate, may by order permit the assignee to continue the business until a day not later than the day of the first meeting of the creditors of said estate, subject however, to such limitations as the Judge may in and by said order impose. 60 V., c. 39, s. 7.

18. Who entitled to vote at meetings.—At any meeting of creditors the creditors may vote in person or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the amount and nature thereof. 58 V., c. 6, s. 18.

19. Voting at meetings.—(1) Subject to the provisions of section 6, all question discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose, the votes of creditors shall be calculated as follows: For every claim of \$100, one vote; for every additional \$100, one vote. 59 V., c. 36, s. 3.

(2) **Voting on claims acquired after assignment.**—No person shall be entitled to vote on a claim acquired after the assignment, unless the entire claim is acquired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable. 58 V., c. 6, s. 19 (2).

(3) **Casting vote.**—In case of a tie, the assignee, or if there are two assignees, the assignee appointed by the creditors, or by the Judge, if none has been appointed by the creditors, shall have the casting vote. 58 V., c. 6, s. 19 (3).

(4) **Security by creditor for claims.**—Every creditor in his proof of claim shall state whether he holds any security for his claim, or any part, thereof and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuations, or he may require from the creditor an assignment of the security at an advance of ten per cent. of the specified value to be paid out of the estate as soon as the assignee has realized such security, and in such case the difference between the

value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect of the estate. 58 V., c. 6, s. 19 (4).

(5) Creditor deemed to hold security where claim is upon negotiable instrument on which debtor secondarily liable.—If a creditor holds a claim based upon negotiable instruments upon which the debtor is only indirectly or secondarily liable and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of this section, and shall put a value on the liability of the party primarily liable thereon as being in security for the payment thereof, but after maturity of such liability and its non-payment he shall be entitled to amend and re-value his claim. 58 V., c. 6, s. 19 (5).

20. Independence of creditor's vote.—(1) It shall not be lawful for a creditor to accept or receive, directly or indirectly, any payment or advantage, or promise of payment or advantage, as an inducement to him to vote at any meeting of creditors, and any person offending against the provisions of this section, shall be liable to a penalty of not less than \$100, and not exceeding \$500.

(2) Recovery of penalty.—Such penalty may be recovered by action of debt in any Court of competent jurisdiction, at the suit of any person suing for the same; one-half of the penalty shall go to the party suing, and the other half for the benefit of the estate. 59 V., c. 36, s. 4.

21. Verified particulars of creditor's claim.—(1) Every person claiming to be entitled to rank on the estate assigned, shall furnish to the assignee particulars of his claim, proved by affidavit, and such vouchers as the nature of the case admits of. 58 V., c. 6, s. 20 (1).

(2) Notice to creditors to file claims within limited time.—Claims not filed within limited or enlarged time to be barred.—The circular calling the first meeting of creditors as required by section 16, shall contain a notice which shall also be published as soon after the date of such notice as possible, at least four times in the Royal Gazette, that all creditors are required to file their claims, duly proven, with the assignee, or if more than one assignee, then with some one of the assignees to be named in said notice within three months of the date of such notice, unless further time be allowed by a Judge of the Supreme or County Court, and that all claims not filed within the time limited, or such further time, if any, as may be allowed by any such Judge, shall be wholly barred of any right to share in the proceeds of the estate, and that the assignee shall be at liberty to distribute the proceeds of the estate as if any claim not filed as aforesaid did not exist, but without prejudice to the liability of the debtor therefor. All claims not filed within the time so limited, or such further time, if any, so allowed by any such Judge, shall be wholly barred of any right to share in the proceeds of the estate, and after the expiration of the time for proving, unless notice in writing of the due extension of time be given him, the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor. 60 V., c. 39, s. 5.

(3) Creditor with unaccrued claim.—A person whose claim has not accrued due shall, nevertheless, be entitled to prove under the assignment and to vote at meetings of the creditors, but in ascertaining the amount of any such claim, a deduction for interest

shall be made for the time which is to run until the claim becomes due. 58 V., c. 6, s. 20 (3).

(4) **Contestation of claim.**—At any time after the assignee receives from any person claiming to be entitled to rank on the estate, proof of his claim, notice of contestation may be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as the Judge of the County Court of the county in which the assignment is registered, may on application allow, proceedings shall be taken by the claimant to establish the claim. Such proceedings may be by a summary application to the said Judge of the County Court, who, after reasonable notice to the assignee (as to the sufficiency of which notice the Judge shall determine), shall proceed to hear the parties and such witnesses as may be produced before him, and shall decide according to the right of the matter. 58 V., c. 6, s. 20 (4).

(5) **Appeal from decision on contested claim.**—The decision of the Judge shall be subject to appeal as in ordinary cases in the County Court. 58 V., c. 6, s. 20 (a).

(6) **Proof where claim on promissory note, etc.**—If the claim of a creditor rests in whole or in part upon a promissory note or bill of exchange, the claimant shall prove that the note or bill is not under discount or owned by any third party, and shall either exhibit such note or bill to the assignee, or furnish reasons by affidavit, explaining to the assignee to his satisfaction why the note or bill is not exhibited to him, and no claim shall be sufficient either for the purpose of voting or ranking on the estate unless the provisions of this sub-section are complied with. 59 V., c. 36, s. 5.

22. Assets not to be removed out of Province, Deposit in bank. When withdrawal from bank to be on Judge's order.—Penalty for violation of section.—The property and assets of any such estate shall not be removed out of the Province without the order of the County Court Judge of the county in which the assignment is registered, and the proceeds of the sale and all moneys received on account of any estate shall be deposited by the assignee in one of the incorporated banks within this Province, and shall not be withdrawn or removed without the order of such County Court Judge, except in payment of dividends and other charges incidental to the winding up of the estate; and any assignee or other person acting in his stead or on his behalf violating the provisions of this section shall be liable to a penalty of five hundred dollars, which may be recovered in an action of debt in any Court of competent jurisdiction by any person suing for the same; and one half of the said penalty shall go to the person suing therefor, and the other half shall belong to the estate of the assignor; and on default of payment of the said penalty and all costs which may be incurred, the party in default shall be disqualified from acting as assignee of an estate while such default continues. 58 V., c. 6, s. 21.

23. Accounts by assignee.—When dividends to be declared.—Upon the expiration of one month from the first meeting of the creditors, or as soon as may be after the expiration of such period, and afterwards from time to time at intervals of not more than three months, the assignee shall prepare and keep constantly accessible to the creditors accounts and statements of his doings as such assignee and of the position of the estate, and he shall declare dividends of the estate whenever the amount of money in his hands will justify a division thereof and also whenever he is requested by the inspectors. 58 V., c. 6, s. 22.

24. Creditor paying \$1, entitled to copy of dividend sheet.—The assignee shall, upon request of any creditor who has duly proved his claim, and upon receipt of one dollar therefor, mail, postpaid to such creditor, a copy of the dividend sheet as soon as the dividend sheet has been prepared, with an abstract of the receipts and disbursements, showing what interest, if any, has been received by him for money in his hands. 60 V., c. 39, s. 6.

25. Assignee to be subject to inspectors.—The assignee shall be subject at all times to the directions, orders and instructions he may receive from time to time from the inspectors with regard to the mode, terms and conditions on which he may dispose of the whole or any part of the estate. 59 V., c. 36, s. 6.

26. Compensation to inspectors and assignee.—The creditors shall determine what compensation, if any, shall be allowed the inspectors, and, before any dividend is declared or ordered, shall determine upon the compensation to be allowed the assignee. 59 V., c. 36, s. 7.

27. Set-off.—The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, in so far as the claim for set-off shall be affected by the provisions of this or any other Act respecting fraudulent preferences. 58 V., c. 6, s. 24.

28. Order for examination under oath of assignor, clerk, etc.—The assignee, or assignees, upon resolution passed by a majority vote of the creditors present, or represented at a regularly called meeting of the creditors of the assignee, or upon written request or resolution of the inspectors of the estate, or any creditor, may apply to a Judge of any County Court, or the clerk of the peace of any county, or any commissioner under the provisions of Chapter 130 of these Consolidated Statutes, for an order to examine the assignor or any person who is or has been an agent, clerk, servant, officer, or employee of any kind of the assignor upon oath before said Judge of the County Court, or clerk of the peace, or commissioner as aforesaid, touching the estate and effects of the assignor and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him, and by him. 60 V., c. 39, s. 8.

29. Assignor, etc., to attend examination, etc.—Any person liable to be examined under this Chapter shall be compelled to attend and testify, and to produce books and documents in the same manner, and subject to the same rules of examination and the same consequences of neglecting to attend or refusal to disclose the matters in respect to which he may be examined, as in the case of a judgment debtor undergoing examination under the provisions of Chapter 130 of these Consolidated Statutes. 60 V., c. 39, s. 9.

30. Service of examination order on witnesses.—Conduct money.—Any person liable to be examined under this Chapter may be served with a copy of the order, such service to be made at least forty-eight hours before the time appointed for the examination; and the person served with the order shall be paid or tender-

ed witness fees to the amount of five cents a mile, going and returning, between the place of such service and that of the return of the order, and such examination may be had notwithstanding the assignor or person to be examined may be under arrest. 60 V., c. 39, s. 10.

31. Examination to be oral.—The examination shall be conducted in the same manner as in the case of an oral examination of an opposite party. 60 V., c. 39, s. 11.

32. Before whom affidavits may be sworn.—Any affidavit, authorized or required under this Chapter, may be sworn before a commissioner for taking affidavits to be read in the Supreme Court, or before a justice of the peace, or if sworn out of New Brunswick, before a notary public. 58 V., c. 6, s. 25.

33. Assignment to vest in assignee property taken under absconding debtor's warrant, where trustees not appointed.—Where an assignment is made for the general benefit of creditors under this Chapter, after the issue of a warrant against the said assignor as an absconding, concealed or absent debtor, under the provisions of Chapter 135 of these Consolidated Statutes, all the property of the debtor taken or liable to be taken under such warrant shall, if no trustees have been appointed under the provisions of said last mentioned Chapter pass to and vest in the assignee under this Chapter, subject to the claim of the creditor taking the proceedings under said Chapter 135 for costs of such proceedings incurred prior to the assignment, and also to the fees and expenses of the Sheriff on such proceedings. 60 V., c. 39, s. 12.

NOVA SCOTIA.

R. S. N. S., 1900., CHAP. 141.

OF THE PREVENTION OF FRAUDS AND PERJURIES.

1. Short title.—This Chapter may be cited as "The Statute of Frauds."

2. "Land."—In this Chapter unless the context otherwise requires, the expression "land" includes mining areas and other mining rights and privileges.

3. Leases and estate in land not in writing to be estates at will, except lease under three years.—Every estate, or other interest in land not put in writing and signed by the person creating or making the same, or his agents thereunto lawfully authorized by writing, shall have the force of a lease or estate at will only, except a lease not exceeding the term of three years from the making thereof, whereupon the rent reserved amounts to two thirds at least of the annual value of the land demised. R.S., c. 91, s. 1.

4. Interest in land assignable only by writing.—No interest in land shall be assigned, granted, or surrendered except by deed or note in writing signed by the party assigning, granting or surrendering the same, or by his agent thereunto authorized by writing, or by act and operation of law. R.S., c. 91, s. 2.

5. Declaration, &c., of trust must be in writing.—No declaration or creation of any trust in land shall be valid unless it is in writing, signed by the person entitled to create or declare the trust, or by his last will, but this section shall not extend to any trust in land arising or resulting by implication or construction of law, or which may be transferred or extinguished by act or operation of law. R.S., c. 91, s. 3.

6. Assignment of trust must be in writing.—No grant or assignment of any trust shall be valid unless it is in writing, signed by the person granting or assigning the same, or by his last will. R.S., c. 91, s. 4.

7. Contracts which require to be in writing.—No action shall be brought,—

(a) whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate; or

(b) whereby to charge any person upon any special promise to answer for the debt, default or miscarriage of another person; or

(c) whereby to charge any person upon any agreement made upon consideration of marriage; or

(d) upon any contract or sale of land or any interest therein; or

(e) upon any agreement that is not to be performed within the space of one year from the making thereof, unless the promise, agreement or contract upon which the action is brought, or some memorandum or note thereof, is in writing, signed by the person sought to be charged therewith or by some other person thereunto by him lawfully authorized. R. S., c. 91, s. 5.

8. Consideration need not be expressed in guaranty.—No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action or other proceeding to charge the person by whom such promise was made, by reason only that the consideration for such promise does not appear in writing, or by necessary inference from a written document. R.S., c. 91, s. 6.

9. Ratification of contract of infant must be in writing.—No action shall be maintained whereby to charge any person upon any promise, made after full age, to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification is made by some writing signed by the party to be charged therewith, or by his agent duly authorized to make such promise or ratification. R.S., c. 91, s. 7.

10. Representation as to character, &c., to obtain credit must be in writing.—No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade, or dealings of any other person to the intent or purpose that such other person may obtain credit, money, or goods thereupon, unless such representation or assurance is made in writing, signed by the party to be charged therewith. R.S., c. 91, s. 8.

11. Contract for sale of goods.—(1.) No contract for the sale of any goods for the price of forty dollars or upwards shall be good, unless,—

(a) the buyer accepts part of the goods so sold and actually receives the same; or

(b) gives something in earnest to bind the bargain or in part payment; or

(c) some note or memorandum in writing of such contract is made and signed by the parties to be charged upon such contract or their agent thereunto lawfully authorized.

(2.) The provisions of this section shall extend to all contracts for the sale of goods of the value of forty dollars and upwards, notwithstanding the goods are intended to be delivered at some future time, or are not at the time of such contract actually made, procured, or provided, or fit, or ready for delivery, or although some act is requisite for the making or completing thereof, or rendering the same fit for delivery. R.S., c. 91, ss. 9, 10.

R. S. N. S., 1900, CHAP. 145.

OF ASSIGNMENTS AND PREFERENCES BY INSOLVENT PERSONS.

SHORT TITLE.

1. Short title.—This Chapter may be cited as “The Assignments Act.”

INTERPRETATION.

2. Interpretation.—In this Chapter, unless the context otherwise requires:

(a) **“Insolvent person.”**—The expression “insolvent person” means any person who is in insolvent circumstances, or is unable to pay his debts in full, or knows himself to be about to become insolvent;

(b) **“Transfer.”**—The expression “transfer” includes gift, conveyance, assignment, delivery over, or payment of property;

(c) **“Property.”**—The expression “property” means goods, chattels or effects, bills, notes, or securities, shares, dividends, premiums, or bonus in any bank, company, or corporation, and every other description of property, real and personal;

(d) **“Judge.”**—The expression “judge” means a judge of the Supreme Court, or the judge of the County Court for the county in which an assignment under this Chapter is registered.

ASSIGNMENTS AND PREFERENCES.

CONFESSION OF JUDGMENT, ASSIGNMENT, ETC., IN FRAUD OF CREDITORS.

3. Confessions of judgment in fraud of creditors made void.—If any insolvent person, voluntarily or by collusion with a creditor or creditors, gives a confession of judgment, *cognovit actionem*, or warrant of attorney to confess judgment, with intent in giving the same,—

(a) to defeat or delay his creditors wholly or in part; or

(b) thereby to give one or more of his creditors a preference

over his other creditors, or over any one or more of such creditors. every such confession, *cognovit actionem* or warrant of attorney to confess judgment shall be deemed and taken to be null and void as against the creditors of the person giving the same, and shall be invalid and ineffectual to support any judgment or writ of execution. 1898, c. 11, s. 1.

4. Preferences made void.—(1) Every transfer of property made by an insolvent person,—

(a) with intent to defeat, hinder, delay or prejudice his creditors, or any one or more of them; or

(b) to or for a creditor with intent to give such creditor an unjust preference over other creditors of such insolvent person, or over any one or more of such creditors, shall as against the creditor or creditors, injured, delayed prejudiced or postponed, be utterly void.

(2) **When transfer deemed to give an unjust preference.**—If any such transfer to or for a creditor has the effect of giving such creditor a preference over the other creditors of such insolvent person, or over any one or more of them, such transfer shall,—

(a) in and with respect to any action or proceeding which is brought, had or taken to impeach or set aside such transfer within sixty days after the giving of the same; or

(b) if such insolvent person makes an assignment for the benefit of his creditors within sixty days from the giving of such transfer.

be presumed to have been made with intent to give such creditor an unjust preference as aforesaid, and to be an unjust preference, whether such transfer was made voluntarily or under pressure.

(3) **"Creditor" includes surety.**—Where the word "creditor" in this section indicates the creditor to whom a preference is given over the other creditors of the insolvent person such word shall be deemed to include any surety, and the indorser of any promissory note or bill of exchange, who would upon payment by him of the debt, promissory note or bill of exchange, in respect to which such suretyship was entered into or such indorsement given, become a creditor of the person giving the preference within the meaning of this section. 1898, c. 11, s. 2.

ASSIGNMENTS FOR GENERAL BENEFIT OF CREDITORS AND "BONA FIDE" TRANSACTIONS PRESERVED.

5. Certain transactions not affected.—(1.) Nothing in the next preceding section shall apply,—

(a) to any assignment made to an official assignee for the county in which the debtor resides or carries on business for the purpose of paying ratably and proportionately, and without preference or priority, all the creditors of the debtor their just debts; or

(b) to any *bona fide* sale or payment made in the ordinary, course of trade or calling to innocent purchasers or parties; or

(c) to any payment of money to a creditor; or

(d) to any *bona fide* gift, conveyance, assignment, transfer or delivery over of any property which is made in consideration of any present actual *bona fide* payment in money, or by way of security for any present actual *bona fide* advance of money, or which is made in consideration of any present actual *bona fide* sale or delivery of property; provided that the money paid, or the property sold or delivered, bears a fair and reasonable relative value to the consideration therefor. 1898, c. 11, s. 3; 1899, c. 53, s. 1.

6. Assignment not to official assignee made void.—Every assignment for the general benefit of creditors not made to the official assignee shall be void 1898, c. 11, s. 3 (2); 1899, c. 53, s. 1. (As amended by 1 Edw. VII., c. 34, s. 1.)

7. Transfer of consideration.—In case of a valid sale of goods, securities or property and payment or transfer of the consideration or part thereof, by the purchaser to a creditor of the vendor under circumstances which would render void such a payment or transfer, by the debtor personally and directly, the payment or transfer even though valid as respects the purchaser, shall be void as respects the creditor to whom the same is made. 1898, c. 11, s. 3 (1).

8. Security given up on void payment restored.—If a payment has been made which is void under this Chapter, and any valuable security was given up in consideration of such payment, the creditor shall be entitled to have such security restored, or its value made good to him before, or as a condition of, the return of the payment. 1898, c. 11, s. 3, (3.)

9. Payment where security given up not affected.—Nothing in the preceding provisions shall affect,—

(a) any payment of money to a creditor, where such creditor, by reason or on account of such payment, has lost or been deprived of, or has in good faith given up, any valid security which he held for the payment of the debt so paid, unless the value of the security is restored to the creditor; or

(b) any substitution in good faith of one security for another for the same debt as far as the debtor's estate is not thereby lessened in value to the other creditors. 1898, c. 11, s. 3 (4.)

WHAT SHALL CONSTITUTE SUFFICIENT ASSIGNMENT.

10. Form, &c., of assignment.—Every assignment made under this chapter for the general benefit of creditors shall be valid and sufficient if it is made to an official assignee and is in the words following, that is to say,—all my personal property which may be seized and sold under execution, and all my real property, credits and effects,—or if it is in words to like effect; and an assignment so expressed shall vest in the assignee all the real and personal property, rights, credits and effects, whether vested or contingent, belonging at the time of the assignment to the assignor, except such as are by law exempt from seizure or sale under execution; subject, however, as regards land to the provisions of The Registry Act. 1898, c. 11, s. 4.

11. Mistake, &c., not to vitiate.—No advantage shall be taken or gained by any creditor of any mistake, defect or imperfection in any assignment under this Chapter for the general benefit of creditors if the same can be amended or corrected, and if there is any mistake, defect or imperfection therein, the same shall be amended by a judge on any application of the assignee, or of any creditor of the assignor, on such notice being given to other parties concerned as the judge thinks reasonable, and the amendment, when made, shall have relation back to the date of such assignment. 1898, c. 11, s. 11.

PUBLICATION AND REGISTRATION OF ASSIGNMENT.

12. Notice of assignment.—A notice of any assignment made for the general benefit of creditors under this Chapter

shall, as soon as conveniently may be after the execution thereof, be published at least twice in the *Royal Gazette*, and not less than twice in one newspaper at least having a general circulation in the county in which the property assigned is situated. 1898, c. 11, s. 13 part.

13. Registration of assignment.—(1). A counterpart or copy of every assignment made under this Chapter, together with an affidavit of a witness thereto of the due execution of the assignment of which the copy filed purports to be a copy, shall within five days from the execution thereof be filed,—

(a) if the assignor at the time of the execution of such assignment is a resident of Nova Scotia, in the registry of deeds for the registration district in which he resides; or

(b) if the assignor is not such a resident, in the registry of deeds for the registration district in which the personal property assigned is situated, or if such property is in more than one such district then in the registry of deeds for the district in which the principal part of such property is situated.

(2.) The registrar of deeds shall file all such assignments presented to him for that purpose, and shall number and enter the same in a book to be kept for that purpose, and shall indorse upon each assignment the time the same was received by him and such assignments shall be kept in such registry for the inspection of all persons interested therein.

(3.) The registrar shall be entitled to receive a fee of fifty cents for filing such assignment and affidavit and for making all proper indorsements in connection therewith. 1898, c. 11, s. 13 (2)

14. Penalties for failure to publish notice and register.—

(1.) If the said notice of the assignment is not published in the regular number of the *Royal Gazette*, and of such newspaper as is by this Chapter directed, which are respectively issued first after five days from the execution of the assignment by the assignor, or if the assignment is not registered as directed within five days from the execution thereof, the assignor shall be liable to a penalty of twenty-five dollars for every day which passes after the issue of the number of the newspaper in which the notice should have appeared until the same has been published; and a like penalty for every day which passes after the expiration of five days from the execution of the assignment by the assignor, until the same has been registered.

(2.) The official assignee shall be subject to a like penalty for failure to publish notice of and to register any assignment for every day which passes after the expiration of five days from the delivery of the assignment to him, or of five days after his assent thereto, the burden of proving the time of such delivery or assent being upon the assignee.

(3.) One-half of any such penalty when recovered shall go to the person suing therefor and the other half for the benefit of the estate of the assignor.

(4.) The official assignee shall not be liable for any of the penalties imposed in this section unless he has been paid or tendered the cost of advertising and registering the assignment nor shall he be compelled to Act under the assignment until the costs in that behalf are paid or tendered to him. 1898, c. 11, s. 14.

15. Judge may direct publication and registration.—If the assignment is not registered, and notice thereof published, an application may be made by any one interested in the assignment to a

judge to compel the publication and registration thereof, and the judge shall make an order in that behalf, with or without costs, or upon payment of costs by such person as in his discretion he directs to pay the same. 1898, c. 11, s. 15.

16. Failure to publish, &c., is not to vitiate.—The omission to publish or register as aforesaid, or any irregularity in the publication or registration, shall not invalidate the assignment. 1898, c. 11, s. 16.

DISPOSITION OF ESTATE.

17. Estate not to be removed out of province.—(1.) No property or assets of an estate assigned under the provisions of this Chapter, shall be removed out of Nova Scotia without the order of a judge.

(2) **Moneys to be deposited.**—The proceeds of the sales of such estate and any part thereof, and all moneys received on account thereof, shall be deposited by the assignee in an incorporated bank within the province, and shall not be withdrawn or removed therefrom without the order of a judge, except in payment of dividends and charges incidental to the winding up of the estate.

(3) **Penalty.**—Any assignee or other person acting in his stead, or on his behalf, who violates the provisions of this section, shall be liable to a penalty of four hundred dollars, and one half of the said penalty shall go to the person suing therefor, and the other half shall belong to the estate of the assignor; and in default of payment of the said penalty and all costs which are incurred in any action or proceeding for the recovery thereof, such assignee or other person may be imprisoned for any period not exceeding thirty days, and shall be liable to forfeit his office of official assignee. 1898, c. 11, s. 5.

CHANGE OF ASSIGNEE.

18. Creditors may change assignee.—(1.) A majority in number and value of the creditors who have proved claims to the amount of one hundred dollars or upwards, may at their discretion substitute for the official assignee a person residing in the county in which the debtor resided or carried on business at the time of the assignment.

(2.) An assignee may also be removed and another assignee may be substituted, or an additional assignee may be appointed by a judge. 1898, c. 11, s. 8; 1899, c. 53, s. 2.

19. Estate, how vested on change of assignee.—Where a new assignee is appointed the estate shall forthwith vest in him without a conveyance or transfer, and he shall register an affidavit of his appointment in the registry of deeds for the registration district in which the original assignment was filed, and the registration of such affidavit shall have the same effect as the execution and registration of a conveyance from the original assignee. 1898, c. 11, s. 8 (2).

RECOVERY OF ESTATE.

20. Assignee, power of to sue.—(1.) Except as in this section is otherwise provided, the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments or

other transactions made or entered into in fraud of creditors, or made or entered into in violation of this Chapter.

(2) **Creditor may take proceedings.**—If at any time any creditor desires to cause any proceeding to be taken which, in his opinion, would be for the benefit of the estate, and the assignee under the authority of the creditors refuses or neglects to take such proceeding, after being duly required so to do, the creditor shall have the right to obtain an order of a judge authorizing him to take the proceedings in the name of the assignee, but at his own expense and risk, upon such terms and conditions as to indemnity to the assignee, as the judge prescribes; and thereupon any benefit derived from the proceeding shall belong exclusively to the creditor instituting the same for his benefit: provided that if, before such order is granted, the assignee signifies to the judge his readiness to institute such proceeding for the benefit of the creditors, the order shall prescribe the time within which he shall do so, and in that case the advantage derived from the proceeding, if instituted within such time, shall appertain to the estate. 1898, c. 11, s. 9.

(3.) After an assignment under this Chapter has been made the assignee shall have the right to be substituted for any party who has commenced proceedings under any of the provisions of this Chapter for the rescissions of agreements, deeds and instruments or other transactions made and entered into in fraud of creditors or in violation of this Chapter, upon such terms as the Court or a judge orders. 2 Ed. VII., ch., 12, s. 3.

21. (1.) In case of a transfer of any property which in law is invalid against creditors, if the person to whom the transfer was made shall have sold or disposed of, realized or collected, the property or any part thereof, the money or other proceeds may be seized or recovered in any action by a person who would be entitled to seize and recover the property if it had remained in the possession or control of the debtor or of the person to whom the transfer was made, and such right to seize and recover shall belong not only to an assignee for the general benefit of the creditors of the said debtor, but in case there is no such assignment shall exist in favor of all creditors of such debtor.

(2.) Where there has been no assignment for the benefit of creditors, and the proceeds are of a character to be seizable under execution, they may be seized under the execution of any creditor, and shall be distributable amongst the creditors under "The Creditor's Relief Act" or otherwise.

(3.) Where there has been no assignment for the benefit of creditors, and whether the proceeds realized as aforesaid, are or are not of a character to be seized under execution, any action may be brought therefor by a creditor (whether an execution creditor or not), on behalf of himself and all other creditors, or such other proceedings may be taken as may be necessary to render the said proceeds available for the general benefit of the creditors.

(4.) This action shall not apply as against innocent purchasers of the property. (As amended by 3-4 Ed. VII., c. 31, s. 1.

WAGES AND SALARIES.

22. Wages, &c., of employees, priority of.—Whenever an assignment is made of any real or personal property for the general benefit of creditors under the provisions of this Chapter, the as-

signee shall pay in priority to the claims of the ordinary or general creditors of the person making the same, the wages or salaries of all persons in the employment of such person at the time of making such assignment or within one month before the making thereof, not exceeding three months' wages or salary; and such persons shall be entitled to rank as ordinary or general creditors for the residue, if any, of their claims. 1898, c. 11, s. 7.

MEETINGS OF CREDITORS.

23. First meeting of creditors, how called.—It shall be the duty of the assignee immediately upon the execution of the assignment to inform himself, by reference to the assignor and his records of account, of the names and residences of the assignor's creditors, and within five days from the date of assignment to convene a meeting of the creditors for the giving of directions with reference to the disposal of the estate, by mailing prepaid and registered to every creditor known to him a circular calling a meeting of creditors to be held at a convenient place to be named in the notice, not later than twelve days after the mailing of such notice, and by advertisement in the *Royal Gazette*; and all other meetings to be held shall be called in like manner. 1898, c. 11, ss. 17, 18 (2).

24. Judge may direct as to meeting.—If a sufficient number of creditors do not attend such meeting, or fail to give directions with reference to the disposal of the estate the disposal of the same shall be in the discretion of the assignee. 1898, c. 11, s. 18 (2.) (As amended by 1 Edw. VII., c. 34, s. 2.)

25. Creditors may compel calling of meeting.—(1.) If a request in writing, signed by a majority of the creditors having claims duly proved of one hundred dollars and upwards, computed in the manner hereinafter directed, is made upon the assignee, he shall within two days after receiving such request call a meeting of the creditors at a time not later than twelve days after the receipt by him of such request.

(2.) If the assignee fails to call such meeting when so requested he shall be liable to a penalty of twenty-five dollars for every day after the expiration of the time limited for the calling of the meeting until the meeting is called. 1898, c. 11, s. 18.

VOTING AT MEETINGS.

26. Voting at meetings, how regulated.—At any meeting of creditors any creditor may vote in person, or by proxy authorized in writing, but no creditor whose vote is disputed shall be entitled to vote until he has filed with the assignee an affidavit in proof of his claim, stating the nature and amount thereof. 1898, c. 11, s. 19.

27. Calculation of Votes.—(1.) Except for the purpose of making a change of assignee all questions discussed at meetings of creditors shall be decided by the majority of votes, and for such purpose the votes of creditors shall be calculated as follows:—

For every claim of or over \$100, and not exceeding \$200—1 vote.

For every claim of or over \$200, and not exceeding \$500—2 votes.

For every claim of or over \$500, and not exceeding \$1,000—3 votes.

For every additional \$1,000, or fraction thereof—1 vote.

(2.) No person shall be entitled to vote on a claim which he has acquired after the assignment unless the entire claim is ac-

quired, but this shall not apply to persons acquiring notes, bills or other securities upon which they are liable.

(3.) In case of a tie, the assignee, or, if there are two assignees, then the assignee appointed by the creditors, or by the judge, if none has been appointed by the creditors, shall have a casting vote. 1898, c. 11, s. 20.

BANKING AND PROOF OF CLAIMS.

28. Individual and partnership estates, ranking upon.—

If any assignor executing an assignment under this Chapter for the general benefit of his creditors owes debts both individually and as a member of a partnership, or as a member of two different partnerships, the claims shall rank first upon the estate by which the debts they represent were contracted, and shall only rank upon the other after all the creditors of that other have been paid in full. 1898, c. 11, s. 6.

29. Secured claims.—Every creditor in his proof of claim shall state whether he holds any security for his claim or any part thereof; and if such security is on the estate of the debtor, or on the estate of a third party for whom such debtor is only secondarily liable, he shall put a specified value thereon, and the assignee under the authority of the creditors may either consent to the right of the creditor to rank for the claim after deducting such valuation, or he may require from the creditor an assignment of the security at an advance of ten per cent. upon the specified value to be paid out of the estate as soon as the assignee has realized such security; and in case the difference between the value at which the security is retained and the amount of the gross claim of the creditor shall be the amount for which he shall rank and vote in respect to the estate. 1898, c. 11, s. 20 (4.)

30. Negotiable instruments, ranking in respect to.—If a creditor holds a claim based upon a negotiable instrument, upon which the insolvent is only secondarily liable, and which has not matured at the time of proving the claim, such creditor in his proof of claim shall set a value upon the liability of the person primarily liable thereon, and the difference between such value and the amount of the claim shall, until the instrument matures, be the amount at which the claim shall be calculated for the purpose of voting at meetings and other purposes, except the payment of dividends thereon, or collocation in the dividend sheets; but after the maturity of such instrument, the claim shall be calculated for all purposes at the full amount, less any sum paid on account thereof by the person primarily liable on such negotiable instrument. 1898, c. 11, s. 20 (5.)

(a) In case a person claiming to be entitled to rank on the estate assigned holds security for his claim or any part thereof, of such a nature that he is required by this Act to value the same, and he fails to value such security, a judge may upon summary application by the assignee or by any other person interested in the debtor's estate, of which application ten days' notice shall be given to such claimant, or that unless a specified value shall be placed on such security, and notified in writing to the assignee within a time to be limited by the order, such claimant shall in respect of the claim, or the part thereof for which the security is held in case the security is held for part only of the claim, be wholly barred of any right to share in the proceeds of such estate; and if a speci-

fied value is not placed on such security and notified in writing to the assignee according to the exigency of the said order, or within such further time as the said judge may by subsequent order allow, the said claim, or the said part, as the case may be, shall be wholly barred as against such estate, but without prejudice to the liability of the debtor therefor. (As amended by 2 Ed. VII., ch. 12, s. 1.)

31. Set-off.—The law of set-off shall apply to all claims made against the estate, and also to all actions instituted by the assignee, for the recovery of debts due to the assignor, in the same manner and to the same extent as if the assignor were plaintiff or defendant, as the case may be, except in so far as any claim is affected by the provisions of this Chapter or any other enactment respecting frauds or unjust preferences. 1898, c. 11, s. 24.

32. Particulars of claim.—Every person claiming to be entitled to rank on the estate assigned shall furnish to the assignee particulars of his claim, proved by affidavit, and such vouchers as the nature of the case admits of. 1898, c. 11, s. 21 (1.)

33. If any person claiming to be entitled to rank on the estate assigned does not within a reasonable time after receiving notice of the assignment, and of the name and address of the assignee, furnish to the assignee particulars and proofs of his claim as provided by this chapter, the assignee may issue a final notice by registered letter mailed to such person requiring him within a time stated in the notice to furnish such particulars and proofs of his claim on penalty of being debarred from participation in the proceeds of the estate; and if the particulars and proofs of such claim are not furnished within the time stated in such notice, the same shall be wholly barred, and the assignee shall be at liberty to distribute the proceeds of the estate as if no such claim existed, but without prejudice to the liability of the debtor therefor. The time stated in such notice shall in the case of creditors resident within the Province be not less than thirty days, and of those resident without the Province not less than sixty days. (As amended by 1 Edw. VII., c. 34, s. 3.)

34. Claims not accrued due.—A person whose claim has not accrued due shall nevertheless be entitled to prove under the assignment and vote at meetings of creditors, but in ascertaining the amount of any such claim a deduction for interest shall be made for the time which has to run until the claim becomes due. 1898, c. 11, s. 21 (3.)

CONTESTATION OF CLAIMS.

35. Contestation of claims.—(1.) At anytime after the assignee receives from any person claiming to be entitled to rank on the estate proof of his claim, notice of contestation of the claim may, at the request of any creditor, be served by the assignee upon the claimant. Within thirty days after the receipt of the notice, or such further time as a judge on application allows, an action shall be brought by the claimant against the assignee to establish the claim, and a copy of the writ in the action served on the assignee; and in default of such action being brought and writ served within the time aforesaid, the claim to rank on the estate shall be forever barred.

(2.) The notice by the assignee shall contain the name and place of business of one of the solicitors of the Supreme Court, upon whom service of the writ may be made, and service upon such solicitor shall be deemed sufficient service of the writ. 1898, c. 11, s. 21 (4), (5).

DIVIDENDS.

36. Accounts to be kept.—Upon the expiration of one month from the first meeting of creditors, or as soon as may be after the expiration of such period, but not more than three months thereafter, and afterwards, from time to time at intervals of not more than three months, the assignee shall prepare and keep, constantly accessible to the creditors, accounts and statements of his doings as such assignee, and of the position of the estate. 1898, c. 11, s. 22 (part.)

37. Dividends, duty of assignee to pay.—As large a dividend as can with safety be paid shall be paid by every assignee under this Chapter, within twelve months from the date of any assignment made thereunder, and earlier if required by vote of the creditors, and thereafter a further dividend shall be paid every six months, and more frequently if required by the creditors, until the estate is wound up and disposed of.

38. Dividend sheet.—So soon as a dividend sheet is prepared, notice thereof shall be given by letter mailed, postage prepaid, to each creditor, enclosing an abstract of receipts and disbursements, shewing what interest has been received by the assignee for moneys in his hands, together with a copy of the dividend sheet, noting thereon the claims objected to, and stating whether any reservation has or has not been made therefor; and after the expiry of eight days from the date of mailing such notice, abstract and dividend sheet as aforesaid, dividends on all claims not objected to within that period shall be paid. 898 c. 11, s. 23.

OFFICIAL ASSIGNEES.

39. Appointment of official assignees.—The Governor in Council may in each county appoint one or more persons to be official assignees, who shall perform the duties and exercise the powers imposed by this Chapter. 1898, c. 11, s. 27.

(2.) Every person so appointed shall before entering upon any duties or exercising any powers as an official assignee, file in the office of the Provincial Secretary a bond to His Majesty in such sum and with such sureties as is directed and approved by the Governor-in-Council, conditioned for the faithful performance of his duties as such official assignee.

(3.) Every person at present holding office as an official assignee, under this Chapter, shall within thirty days from the passing of this Act file in the office of the Provincial Secretary a bond to His Majesty in such sum and with such sureties as is directed and approved by the Governor-in-Council, conditioned for the faithful performance of his duties as such official assignee, any such official assignee failing to fill such bond within said period shall be subject to immediate removal. (Added by 3-4 Ed. VII., c. 31, s. 2.)

40. Their remuneration.—(1.) The assignee shall receive such remuneration as is voted to him by the creditors at any meeting,

subject to the review of a judge, if complained of by the assignee or any creditor.

(2.) If no remuneration is voted to the assignee by the creditors, the amount thereof shall be fixed by a judge not exceeding five per cent. on the gross proceeds of the estate. 1898, c. 11, s. 12; 1899, c. 53, s. 7. (As amended 2 Ed. VII., c. 12, s. 4.)

41. (1.) Where there has been an assignment for the benefit of creditors the assignee or assignees, upon resolution passed by a majority vote of the creditors present, or represented at a meeting of the creditors of the assignor regularly called, may without an order examine the assignor or any person who is or has been an agent, clerk, servant, officer or employee of any kind of the assignor, upon oath before a master of the Supreme Court or before a judge or before any official referee, or may by the order of the Court or of such judge examine the assignor on oath before any other person to be specially named in such order, touching the estate and effects of the assignor, and as to the property and means he had when the earliest of the debts or liabilities of the assignor existing at the date of the assignment was incurred, and as to the property and means he still has of discharging his debts and liabilities, and as to the disposal he has made of any property since contracting such debt or incurring such liability, and as to any and what debts are owing to him.

(2.) The rules and procedure from time to time in force in the Supreme Court for the examination of judgment debtors shall, as far as may be, apply to an examination under this Act of an assignor in all respects as if the assignor were a judgment debtor.

(3.) In case such assignor does not attend as required by the said appointment or appointment and order, as the case may be, and does not allege a sufficient excuse for not attending, or if attending refuses to disclose his property or his transactions respecting the same, or does not make satisfactory answers respecting the same, or if it appears from such examination that such assignor has concealed or made away with his property in order to defeat or defraud his creditors, or any of them, the Court or a judge may order the assignor to be committed to the common gaol of the county in which he resides for any term not exceeding twelve months.

42. (1.) Any person liable to be examined under the next preceding section of this Act may be served with an appointment signed by the judge or officer, or a copy thereof, and where the examination is to take place under an order also with a copy of the order; such service to be made at least forty-eight hours before the time appointed for the examination; and the person to be examined is to be paid the same fees as a witness is paid in cases in the Supreme Court.

(2.) The Examination shall be conducted in the same manner as in the case of an oral examination of an opposite party. (Added by 2 Edw. VII., c. 12, s. 2.)

43. Any person liable to be examined under section 41 of this Act may be compelled to attend and testify and to produce books and documents in the same manner and subject to the same rules of examination and the same consequences of neglecting to attend or refusing to disclose the matters in respect to which he may be examined as in the case of a witness in an action in the Supreme Court. (Added by 2 Edw. VII., c. 12, s. 2.)

44. (1.) In case any person was, or is believed or suspected to have, in his possession or power any book, document, or paper

of any kind, relating in whole or in part to the debtor, his dealing or property, such person may upon resolution passed by a majority vote of the creditors present or represented at a regularly called meeting of the creditors of the assignor, exclusive of such person (if he is a creditor) be required by the assignee to produce such statement or statements for the information of such assignee.

(2.) In case such person fails to produce the said book, document or other paper within four days of his being served with a copy of the said resolution, and a request of the assignee in that behalf, or in case the assignee is not satisfied that full production has been made, the assignee may without an order examine the said person before any of the officers mentioned in section 41 of this Act, touching any book, document or other paper which he is supposed to have received.

(3.) Any such person may be compelled to attend and testify, and to produce upon his examination any book, document or other paper which under this section he is liable to produce, in the same manner and subject to the same rules of examination, and the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, as in the case of a witness in an action in the Supreme Court. (Added by 2 Ed., VII., ch. 12, s. 2.)

45. An assignment for the general benefit of creditors under this chapter shall take precedence of all attachments and of all executions not completely executed by payment; provided, however, that this section shall not apply to lands. (Added by 8 Edw. VII., c. 21, s. 1.)

QUEBEC.

SELECTED ARTICLES OF THE CIVIL CODE OF LOWER CANADA IN REGARD TO CONTRACTS AND PAYMENTS MADE IN FRAUD OF CREDITORS, INSOLVENCY, ETC.

Article 17 (23) provides that by "bankruptcy" is meant the condition of a trader who has discontinued his payments.

OF THE AVOIDANCE OF CONTRACTS AND PAYMENTS MADE IN FRAUD OF CREDITORS.

1032. Creditors may in their own name impeach the acts of their debtors in fraud of their rights, according to the rules provided in this section. C. N., 1167; C. C., 484, 655, 745, 803, 2023.

1033. A contract cannot be avoided unless it is made by the debtor with intent to defraud, and will have the effect of injuring the creditor.

1034. A gratuitous contract is deemed to be made with intent to defraud, if the debtor be insolvent at the time of making it.

1035. An onerous contract made by an insolvent debtor with a person who knows him to be insolvent is deemed to be made with intent to defraud.

1036. Every payment by an insolvent debtor to a creditor knowing his insolvency, is deemed to be made with intent to defraud, and the creditor may be compelled to restore the amount or thing received or the value thereof, for the benefit of the creditors according to their respective rights.

1037. Article 1037 is repealed by the federal act respecting the Revised Statutes of Canada. R. S. Q., 6233; 49 V. (Can.), c. 4, s. 5, Schedule A.

1038. An onerous contract made with intent to defraud on the part of the debtor, but in good faith on the part of the person with whom he contracts is not voidable; saving the special provisions applicable in cases of insolvency of traders. C. C., 803, 2023, 2085, 2090.

1039. No contract or payment can be avoided, by reason of anything contained in this section, at the suit of a subsequent creditor, unless he is subrogated in the rights of an anterior creditor. R. S. Q., 6234, 49 V. (Can.) c. 4, s. 5, schedule A.

1040. No contract or payment can be avoided by reason of anything contained in this section at the suit of any individual creditor, unless such suit is brought within one year from the time of his obtaining a knowledge thereof.

If the suit be by assignees or representatives of the creditors collectively, it must be brought within a year from the time of their appointment.

Except as above, there is no statute in Quebec dealing generally with the subjects covered by the foregoing statutes of the other provinces of Canada. The following are the chief provisions of the Code in regard to the insolvent debtors, or in regard to acts in fraud of creditors.

484. The creditors of the usufructuary may have his renunciation annulled, if it be made to their prejudice. C. N., 622; C. C., 1032 et s.

655. The creditors of an heir who renounces, to the prejudice of their rights, may procure the rescission of such renunciation, and afterwards accept the succession themselves, in right of their debtor, and to his place and stead.

In such case the renunciation is annulled only in favor of the creditors who have demanded the rescission and merely to the extent of their claims. It is not annulled in favor of the heir who has renounced. C. N., 788; C. C., 1031 et s.

745. The creditors of the succession and those of the copartitioners have a right to be present at the partition if they require it.

If the partition be made in fraud of their rights, they may attack it in the same manner as any other act made to their detriment. C. N., 865, 882; C. C., 1031 et s.

803. If at the time of the gift, and deduction being made of the things given, the donor were insolvent, the previous creditors, whether their claims are hypothecary or not, may obtain the revocation of the gift, even though the donee were ignorant of the insolvency.

In the case of insolvent traders, gifts made by them within three months previous to the assignment, or the writ of attachment in compulsory liquidation, are voidable, as presumed to be fraudulent. C. C., 1032 et s.

1092.—The debtor cannot claim the benefit of the term when he has become a bankrupt or insolvent, or has by his own act diminished the security given to his creditor by the contract.—C. N. 1188; C. C. P., 802.

1118. The co-debtor of a joint and several debt, who has paid it in full, can only recover from the others the share and portion of each of them, even though he be specially subrogated in the rights of the creditor.

If one of the co-debtors be found insolvent, the loss occasioned by his insolvency is divided by contribution among all the others, including him who has made the payment. C. N. 1214.

1119. In case the creditor has renounced his joint and several action against one of the debtors, if one or more of the remaining co-debtors become insolvent, the shares of those who are insolvent are made up by contribution by all the other co-debtors, except the one so discharged whose part in the contribution is borne by the creditor. C. N. 1215; C. C. 1114.

1543. In the sale of moveable things the right of dissolution by reason of non-payment of the price can only be exercised while the thing sold remains in the possession of the buyer, without prejudice to the seller's right of revendication as provided in the title *Of Privileges and Hypothecs*.

In the case of insolvency such right can only be exercised during the thirty days next after the delivery. (R. S. Q., 5811, 54 V., cap. 39.) C. N., 1654; C.C., 1998, 1999, 2000.

1981. The property of a debtor is the common pledge of his creditors and where they claim together they share its price rateably, unless there are amongst them legal causes of preference. C. N., 2093.

1982. The legal causes of preference are privileges and hypothecs. C. N., 2094.

The subjects of privileges and hypothecs are dealt with in articles 1983 to 2081.

1998. The unpaid vendor of a thing has two privileged rights.

1. A right to revendicate;
2. A right of preference upon its price.

In the case of insolvent traders, these rights must be exercised within thirty days after the delivery. R. S. Q., 5827, 54 V., c. 39; C. C., 1543; C. C. P., 946 et s., 955, s. 1.

1999.—The right to revendicate is subject to four conditions:

1. The sale must not have been made on credit;
2. The thing must still be entire and in the same condition;
3. The thing must not have passed into the hands of a third party who has paid for it;
4. It must be exercised within eight days after the delivery; saving the provisions concerning insolvent traders contained in the last preceding article.

2023. Hypothec cannot be acquired, to the prejudice of existing creditors, upon the immoveables of persons notoriously insolvent, or of traders within the thirty days previous to their bankruptcy. C. C., 1032 et s., 2085, 2090.

2085. The notice received or knowledge acquired of an unregistered right belonging to a third party and subject to registration, cannot prejudice the rights of a subsequent purchaser for valuable consideration whose title is duly registered, except when such title is derived from an insolvent trader. C. N. 1071.

2090. The registration of a title conferring real rights in or upon the immovable property of a person, made within the thirty days previous to his bankruptcy, is without effect; saving the case in which the delay given for the registration of such title, as mentioned in the following chapter, has not yet expired. C. N., 2146; 1038, 2023.

347. Curators to property are those appointed:

1. To the property of absentees;
2. In cases of substitution;
3. To vacant estates;
4. To the property of extinct corporations;
5. To property abandoned by insolvent traders who have made an abandonment of their property for the benefit of their creditors, or by arrested or imprisoned debtors, or on account of hypothecs;
6. To property accepted under benefit of inventory. R. S. Q., 5793; C. C., 87 et s.; 372, 373, 685 et s.; 945; C. C. P., 581, 867 et s.; 1338 et s.; 1410, 1426 et s.

347a. Curators to property must be sworn before entering upon their duties. 60 V., c. 50, s. 15.

348. The provisions relating to curators to the property of absentees are contained in the title *Of Absentees*. Those concerning curators to the property of extinct corporations, in the title *Of Corporations*. In the third book and in the Code of Civil Procedure are to be found the rules touching the appointment, powers and duties of the other curators mentioned in the preceding article, who must also be sworn.

OF THE LIQUIDATION OF THE AFFAIRS OF DISSOLVED CORPORATIONS.

371. Saving the case of the voluntary liquidation of joint stock companies, a dissolved corporation is, for the liquidation of its affairs, in the same position as a vacant succession. The creditors and others interested have the same recourse against the property which belonged to it, as may be exercised against vacant successions and the property belonging to them. R. S. Q. 5798.

372. In order to facilitate such recourse, a curator who represents such corporation and is seized of the property which belonged to it, is appointed by the proper court with the formalities observed in the case of vacant estates.

373. Such curator must be sworn; he must give security and make an inventory. He must also dispose of the moveables, and must proceed to the sale of the immoveable property, and to the distribution of the price between the creditors and others entitled to it, in the manner prescribed for the discussion, distribution and division of the property of vacant estates to which a curator has been appointed, and in the cases and with the formalities required by the Code of Civil Procedure. C. C. 685 et s.; C. C. P. 986, 1339.

373a. In the case of the voluntary liquidation of a joint stock company, one or more liquidators are appointed in the manner required by law, for the purpose of winding up the affairs and of distributing the assets of the company. R. S. Q. 5799.

The following articles are inserted in the Civil Code, after article 373a as enacted by article 5799 of the Revised Statutes:

"373b. Non-commercial joint stock corporations or companies, which have ceased payment, may be placed in liquidation on the application of any unsecured creditor for a sum of at least two hundred dollars; provided that demand of payment has been made thirty days before the service of the notice mentioned in the following article:

"373c. The application is made by petition presented to the judge of the district in which the company has its head office, after a notice of three days to the company, praying that the company be

placed in liquidation and for the appointments of a provisional guardian.

"373d. If the application is not immediately contested in the manner provided for the abandonment of property, the judge shall order the liquidation of the company and the appointment of a provisional guardian.

"373e. The provisional guardian shall take possession of all the property of the company, as well as its books, credits and assets, and shall give the notices to the creditors and shareholders ordered by the judge, calling upon them to appoint a liquidator, with the same formalities as those respecting the appointment of a curator to an abandonment of property, the notice to be given collectively to all the shareholders and creditors and not individually.

"373f. The liquidator, after his appointment, shall have the management and shall dispose of the property of the company in the same manner as a curator to the property of an insolvent and with the same powers.

"373g. The judge may, at his discretion, appoint one or more inspectors, from among the creditors of the company.

"373h. The president, secretary, treasurer or agent of the company, or any person having the custody thereof, shall be bound, upon an order of the judge, to deliver up, to the liquidator or to the provisional guardian, all such books and documents belonging to the company which the judge shall deem requisite to the liquidation, under penalty of being guilty of contempt of court.

"373i. All the provisions of the Code of Civil Procedure respecting abandonment of property, not inconsistent with articles 373b to 373h, shall apply to such liquidation. The liquidator shall be vested with all the rights of action of the insolvent company and he shall also be made a party to all actions and proceedings taken against the company.

"373j. The provisions of articles 373b to 373i shall apply to the cases of liquidation under article 373a." 3 Edw. VII., c. 48.

ABANDONMENT OF PROPERTY.

The following are the provisions of the Code of Civil Procedure of the Province of Quebec in regard to the abandonment of property for the benefit of creditors.

853. The following persons may make a judicial abandonment of their property for the benefit of their creditors:

1. A debtor who has been arrested upon *Capias ad Respondendum*, as provided in the chapter thereon;
2. A trader who has ceased his payments and upon whom a demand of abandonment has been made by any creditor whose claim is unsecured for a sum of two hundred dollars or upwards. C. C. P., 763, 763a, amended, R.S., 5952, 5953.

854. The demand required by paragraph 2 of the preceding Article must be signed by the creditor or by his agent specially authorized in that behalf; and in the case of a corporation, by its president, general manager, or local agent for the district where the abandonment should be made, or by the specially authorized agent of such corporation.

Any demand made by virtue of a special power of attorney must mention the fact. *Neu.*

855. The service of the demand on a person in the Province is subject to the same rules as ordinary summons. *New.*

856. The demand must be filed at the office of the court, together with a claim under oath accompanied by vouchers, and the special power of attorney, if any, under which the demand has been made. C. C. P., 763a, *in part, amended*; R. S., 5953; 55-56 Vic., c. 43, s. 1.

857. The demand may be contested by petition, which must be filed within two days after the service of the demand, and be served upon the demanding party as soon as possible.

The contesting party may, within the same delay, file a motion to stay the proceedings until a power of attorney or security for costs is furnished by the party who made the demand, whenever the latter is not resident in the Province. *New.*

858. The abandonment consists of the filing of the declaration, and of the deposit of the statement, as hereinafter provided. *New*; C. C. P., 764, *in part*; R. S., 3594.

859. If the debtor does not contest the demand, he must, within two days after it has been served upon him, file at the place where by law the abandonment must be made, a declaration that he consents to abandon all his property to his creditors; and he must deposit his statement within four days from such service.

If there is a contestation or a motion for a power of attorney or for security for costs, the delays are computed from the judgment thereon.

The judge may extend the delays for filing the declaration or for depositing the statement. *New, in part*; C. C. P., 763a; 55-56 Vic., c. 43, s. 1.

860. If one or more of the members of a partnership is dead, or absent from the Province, the declaration and statement may be signed by the surviving or by the resident partners; but the abandonment does not then affect the private property of the dead or absent partner. *New.*

861. The statement must be sworn to by the debtor and show:

1. All the moveable and immoveable property liable to seizure in his possession;
2. The names and addresses of his creditors, the amount of their respective claims, and the nature of each claim, whether privileged, hypothecary or otherwise.

Unless a declaration has been made by the debtor in conformity with Article 859, the statement must be accompanied with a declaration by the debtor that he consents to abandon all his property to his creditors. C. C. P., 764, *in part, amended*; R. S., 5954; 55-56 Vic., c. 43, s. 2.

862. The declaration and the statement are filed in the office of the Superior Court for the district where the debtor has his principal place of business, and in default of such place, where he is domiciled. C. C. P., 764, *in part*, R. S., 5954.

863. The abandonment deprives the debtor of the enjoyment of such of his property as is liable to seizure, as well as of the possession of his books of account and titles of debt, and gives his creditors the right to have such property sold and realized for the payment of their respective claims. C. C. P., 778; R. S., 5964.

864. Immediately after the filing of the declaration that the debtor consents to abandon, whether it is accompanied by the state-

ment or not, the prothonotary appoints a provisional guardian whom he, as far as possible, selects from the most interested creditors, who, either personally or by a person whom he delegates for that purpose, takes immediate possession of all the property liable to seizure and of the books of account and titles of debt of the debtor.

The guardian may summarily dispose of any perishable goods and may take conservatory measures, under the direction of the judge, or, in the absence of the latter, of the prothonotary. C. C. P., 768, *in part*, amended; R. S., 5956; 55-56 Vic., c. 43, s. 3.

865. Within five days after the filing of the statement the provisional guardian must give notice of the abandonment.

1. By inserting an advertisement to that effect in the *Quebec Official Gazette*.

2. By a registered letter, posted to the address of each of the creditors, setting forth the date of the filing of the statement, and the amount and the nature of each claim.

In default of such notices being given by the provisional guardian within the prescribed delay, the debtor or any creditor may give them. C. C. P., 765, amended; R. S., 5955.

866. For the purpose of advising as to the appointment of a curator and inspectors, a meeting of the creditors is called before the judge, by a registered notice posted to the address of each of them, and also inserted in a newspaper published in the district, or in a neighbouring district if there be none in the district.

Such meeting must be held between the fifth and the fifteenth day after the publication of the notice calling it. C. C. P., 768, *in part*, amended; R.

867. The judge must appoint, as curator and inspectors, the persons chosen by the majority in number and in value of the creditors present or represented at the meeting who have filed sworn claims.

If the majority in number does not agree with the majority in value, the judge decides between them, as he thinks proper. C. C. P., 768, *in part*; R. S., 5956; 55-56 Vic., c. 43, s. 4.

868. The judge may also appoint a guardian and a curator in any of the following cases:

1. When a *capias* cannot be executed by reason of the absence of the defendant, or because he cannot be found.

2. When the debtor is a trader who has ceased his payments, and has left the Province, or no longer resides therein.

3. When the demand has been served upon a trader of the age of seventy years or upwards or upon a woman who is a public trader, and has not been complied with. C. C. P., 780, *in part*, amended; 763a; R. S., 5965; 55-56 Vic., c. 43, s. 1.

869. Such appointment is made on the petition of the plaintiff or of a creditor whose claim is unsecured for a sum of two hundred dollars or upwards.

The powers and obligations of the provisional guardian and of the curator so appointed are, in so far as may be, the same as in cases of abandonment.

The judge may prescribe the observance of such formalities and the giving of such public notices as he deems necessary. *New, in part*; C. C. P. 780, *in part*; R. S., 5965.

870. The curator takes possession of all the property mentioned in the statement, as well as of the debtor's books of account and

titles of debt, and administers the property until it is sold or realized in the manner hereinafter mentioned.

He has, in like manner, a right to receive, collect and recover any other property belonging to the debtor, which the latter has failed to include in his statement, except such as is by law exempt from seizure. C. C. P., 771, 772, *in part, amended*; R. S., 5960; 52 Vic., c. 51, s. 1.

871. After the abandonment, any proceeding by way of seizure, attachment for rent or seizure in execution against the moveable property of the debtor is suspended; and the guardian or the curator has a right to take possession of the goods so seized, upon serving, by a bailiff, a notice of his appointment upon the seizing creditor, or upon his attorney, or upon the bailiff intrusted with the writ.

The costs upon such seizure, incurred after the notice, or, in the absence of such notice, incurred by a creditor after he had knowledge of the abandonment, either personally, or by his attorney, or by the bailiff, and in all cases, the costs of seizure incurred eight days after the notice given by the curator, cannot be collocated upon the property of the debtor, the proceeds of which are distributed in consequence of the abandonment.

The judge may, however, permit the continuance of proceedings already commenced, upon such terms as are deemed proper. *New, in part*; C. C. P., 769; R. S., 5957; *Thompson vs. Kennedy*, M. L. R., 4 S. C., 443.

872. The curator must make his appointment known by an advertisement in the *Quebec Official Gazette*, and be a registered notice posted to the address of each creditor.

In such notice the curator calls upon the creditors to file their sworn claims with him within a delay of thirty days. C. C. P., 770, *amended*; R. S., 5958.

873. If subsequently to the abandonment, and before the curator has rendered his final account, the debtor acquires any additional property, he may be required, by a new demand, to abandon it also.

Immediately upon the abandonment being made, the curator takes possession of such property, and proceeds to the sale and distribution of the moneys as in ordinary cases; but is bound to reimburse the expenses incurred by any creditor through whose diligence the property is rendered available.

Such demand may be made by the curator, with the authorization of the inspectors, or by any creditor competent to demand an abandonment. *New.*

874. The curator appointed may be required to give security, the amount whereof is fixed by the judge.

The security may be given in favour of the creditors of the debtor generally without mentioning their names.

The judge may, whenever it becomes necessary, appoint a curator *ad hoc* to enforce any such bond against the parties liable. *New in part.* C. C. P., 770a *in part.* R. S., 5959.

875. The curator is subject to the summary jurisdiction of the judge. C. C. P., 770a *in part*, R. S., 5959.

876. Any property not belonging to the debtor, which is in the curator's possession by virtue of the abandonment, may be recovered by the person thereto entitled, upon a petition to the judge. *New.*

877. The curator may, with the leave of the judge, upon the advice of the creditors or inspectors, exercise all the rights of action

of the debtor and all the actions possessed by the mass of the creditors. C. C. P., 772 *in part, amended*; R. S., 5960.

878. The curator may sell the moveable and immoveable property of the debtor in the manner indicated by the judge, upon the advice of the parties interested or of the inspectors. C. C. P., 772, *in part, amended*; R. S., 5960.

879. Upon the application of the curator authorized by the inspectors or upon the application of an hypothecary creditor, after notice to the debtor, the judge may authorize the curator to sell the immoveables of the latter in such manner and after such notices as the judge may please to order, he may also authorize or command the curator to issue his warrant to the sheriff competent to act requiring the latter to seize and sell such immoveables.

The sheriff executes such warrant without making any service upon the debtor, but by otherwise observing the same rules as in the case of an execution against immoveables; and all subsequent proceedings are had in the Superior Court.

The money realized from the sale made by the sheriff remain in his hands to be paid by him to the privileged and hypothecary creditors in accordance with the report of distribution which shall be made by the prothonotary of the Superior Court in the usual way, and the surplus shall be remitted to the curator upon an order of the judge for its distribution among the chirography creditors by means of a dividend-sheet prepared in accordance with the following article. *New, in part*; C. C. P., 772, s. 4, *amended*; R. S., 5960; 52 V., c. 51, s. 1; (61 V., c. 47, s. 7.)

880. The moneys realized by the curator from the property of the debtor must be distributed by the curator among the creditors by means of dividend-sheets prepared after the expiration of the delays to file creditor's claims.

Notice of their preparation must be given by an advertisement in the *Quebec Official Gazette*.

A copy of the dividend-sheets, with a notice of the date at which they are payable, must also be posted by registered letter to the address of each of the creditors who have filed their claims or whose names appear in the statement.

The dividend-sheets are payable fifteen days after the observance of these formalities. C. C. P., 772a, *in part, amended*; R. S., 5961; 53 Vic., c. 60, s. 1; 54 Vic., c. 41, s. 2.

881. The claims or dividends may be contested by any party interested or by the curator at the expense of the estate if he is so instructed by the inspectors.

The contestation for such purpose is filed with the curator, who is bound to transmit it immediately to the prothonotary of the Superior Court for the district in which the proceedings upon the abandonment are then deposited, or for such other district as the parties interested in the contestation may agree upon; and the contestation is proceeded with and decided summarily by the judge.

The judge may allow the payment, in whole or in part, of any claims or dividends which are not contested, upon being satisfied that a sufficient sum is retained to meet the contestation. *New, in part*; C. C. P., 772a, *in part, amended*; R. S., 5961; 53 Vic., c. 60, s. 1; 54 Vic., c. 41, s. 2.

882. Any creditor, at any time after the filing of the statement, or the curator with the authorization of the inspectors, may summon

the debtor to appear before the judge or the prothonotary, and examine him on oath concerning the statement and the condition of his affairs. *New*; C. C. P., 775.

883. Upon application by any creditor at any time after the filing of the statement, or by the curator with the authorization of the inspectors, the judge may order the production of any book or document relating to the matters mentioned in the preceding Article, and the examination of the consort of the debtor and of any other persons whom he deems capable of furnishing information in regard to such matters. *New*; C. C. P., 772*b*, in part; 55-56 V., c. 43, s. 5.

884. The rules relating to the summoning and examination of witnesses and the taking of evidence govern cases provided for in the two preceding Articles, in so far as they apply.

Any person summoned who refuses to appear or to answer, or to produce any book or document, may be condemned by the judge to imprisonment for a term not exceeding one year.

If any dispute arises during the examination, the parties are sent before the judge to have it decided. *New*.

885. The curator, authorized by the inspectors, or any creditor, may contest the statement by reason

1. Of the fraudulent omission to mention property of the value of one hundred dollars.

2. Of fraudulent misrepresentations therein with respect to the number of the creditors, or the nature or amount of their claims.

3. Of secretion by the debtor, within the year immediately preceding the filing of the statement, or since, of any portion of his property, with intent to defraud his creditors. C. C. P., 773, amended, R. S., 5962, 55-56 Vic., c. 43, s. 6.

886. The contestation of the statement must be made within four months from the day on which the advertisement of the curator's appointment appears in the *Quebec Official Gazette*. *New*; C. C. P., 773, in part, R. S., 5962.

887. The contesting party is also bound, within the same delay, to prove his allegations, by all legal means.

The judge may, however, prolong the delay for making such proof, but not beyond two months.

The judge may, when satisfied that the delay is due to the fault of the debtor, allow, from time to time, a further delay of two months. *New*, in part; C. C. P., 774, amended.

888. If the contesting party establishes any one of the offences mentioned in Article 885, the judge may condemn the debtor to be imprisoned for a term not exceeding one year.

The rules contained in articles 838, 839, 840, 841 and 842, apply, in so far as may be, to proceedings in execution of the condemnation. C. C. P., 776, in part, amended; R. S., 5963.

889. If the statement is not contested within the required delay, or if the contestation is not proved within such delay, the judge may order the discharge of the debtor, and the latter is exempt from arrest or imprisonment by reason of any cause of action which existed before the making of such statement, without prejudice to cases where he has been already arrested under a *capias*, or is imprisoned for any debt of the description mentioned in Articles 833 and 834; and in case of such imprisonment or arrest, he may obtain his liberation from the judge, upon petition and sufficient proof. C. C. P., 777, amended, C. C., 2275.

890. Judgments and orders rendered in virtue of Articles 866, 867, 868, 871, 874, 877, 878, 879, 882 and 883 are not subject to review or to appeal. *New.*

891. The abandonment of his property discharges the debtor from his debts to the extent only of the amount which his creditors have been paid out of the proceeds of the sale of such property. C. C. P., 779.

892. The curator must keep a register containing the names and description of the debtor, the date of the abandonment, the amount of the proceeds of the property, the amount of each claim, the amount paid to each creditor, the number of dividends, and the amount of his fees and disbursements.

The register may be consulted by any creditor, during reasonable hours, at the curator's place of business.

Within two months after the date when the last dividend-sheet is payable, the curator must deposit the register in the office of the court to which it appertains.

The curator must also, within the same delay, unless the judge otherwise orders, under penalty of all costs and damages, prepare a certificate of all his proceedings, and file it in the office of the Superior Court, with all papers and documents relating to his management, and the complete record thus returned forms part of the records of such court. *New.*

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The Winding-Up Act and Amendments Annotated.

R. S. C., 1906, CHAPTER 144.

An Act respecting Insolvent Banks, Insurance Companies, Loan Companies, Building Societies, and Trading Corporations.

SHORT TITLE.

1. Short Title.—This Act may be cited as "*The Winding Up Act.*" R. S., c. 129, s. 1.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires:—

(a.) "MINISTER."—"Minister" means Minister of Finance.

(b.) "COMPANY."—"Company" includes any corporation subject to the provisions of this Act;

(c.) "INSURANCE COMPANY."—"Insurance company" means a company carrying on, either as a mutual or a stock company, the business of insurance, whether life, fire, marine, ocean or inland marine, accident, guarantee or otherwise;

(d.) "TRADING COMPANY."—"Trading company" means any company, except a railway or telegraph company, carrying on business, similar to that carried on by apothecaries, auctioneers, bankers, brokers, brickmakers, builders, carpenters, carriers, cattle or sheep salesmen, coach proprietors, dyers, fullers, keepers of inns, taverns, hotels, saloons or coffee houses, lime burners, livery stable keepers, market gardeners, millers, miners, packers, printers, quarrymen, share brokers, ship owners, shipwrights, stock brokers, stock jobbers, victuallers, warehousemen, wharfingers, persons using the trade of merchandise by way of bargaining, exchange, bartering, commissions, consignment or otherwise, in gross or by retail, or by persons who, either for themselves, or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods or commodities, or by the manufacture, workmanship or the conversion of goods or commodities or trees;

(e.) "COURT."—"Court" means (i) in the Province of Ontario, the High Court of Justice; (ii) in the Province of Quebec, the Superior Court; (iii) in the Province of Nova Scotia, the Supreme Court; (iv) in the Province of New Brunswick, the Supreme Court; (v) in the Province of British Columbia, the Supreme Court; (vi) in Court; (v) in the Province of Manitoba, Court of King's Bench; (vi) the Province of Prince Edward Island, the Supreme Court; (viii) in

the Province of Saskatchewan, a Superior Court; (ix) in the Province of Alberta, a Superior Court; (x) in the Northwest Territories, such court or magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the *Canada Gazette*; and (xi) in the Yukon Territory, the Territorial Court.

(f.) "OFFICIAL GAZETTE."—"Official Gazette" means the *Canada Gazette* and the Gazette published under the authority of the Government of the Province where the proceedings for the winding up of the business of the company are carried on, or used as the official means of communication between the Lieutenant-Governor and the people, and if no such Gazette is published, then it means any newspaper published in the Province, which is designated by the court for publishing the notices required by this Act;

(g.) "CONTRIBUTORY."—"Contributory" means a person liable to contribute to the assets of a company under this Act, and in all proceedings for determining the persons who are to be deemed contributories and, in all proceedings prior to the final determination of such persons, it includes any person alleged to be a contributory;

(h.) "WINDING-UP ORDER."—"Winding-up order means an order granted by the court under this Act to wind up the business of the company, and includes any order granted by the court to bring within the provisions of this Act any company in liquidation or in process of being wound up.

(i.) "CAPITAL STOCK."—"Capital Stock" includes a capital stock *de jure* or *de facto*.

(j.) "CREDITOR."—"Creditor" includes all persons having any claim against the company present or future, certain, ascertained, or contingent for liquidated or unliquidated damages; and in all proceedings for determining the persons who are to be deemed creditors it shall include any person making any such claim. R. S., c. 129, ss. 2, 33, 56 and 61; 62-63 V., c. 43, s. 5.

3. Company Deemed Insolvent When.—A company is deemed insolvent—

(a) If it is unable to pay its debts as they become due;

(b) If it calls a meeting of its creditors for the purpose of compounding with them;

(c) If it exhibits a statement showing its inability to meet its liabilities;

(d) If it has otherwise acknowledged its insolvency;

(e) If it assigns, removes or disposes of, or attempts or is about to assign, remove or dispose of, any of its property, with intent to defraud, defeat or delay its creditors, or any of them;

(f) If, with such intent, it has procured its money, goods, chattels, lands or property to be seized, levied on or taken, under or by any process of execution;

(g) If it has made any general conveyance or assignment of its property for the benefit of its creditors, or if, being unable to meet its liabilities in full, it makes any sale or conveyance of the whole or the main part of its stock in trade or assets, without the consent of its creditors, or without satisfying their claims;

(h) If it permits any execution issued against it, under which any of its goods, chattels, land or property are seized, levied upon or taken in execution, to remain unsatisfied till within four days of the time fixed by the sheriff or proper officer for the sale thereof, or for fifteen days after such seizure. R. S., c. 129, s. 5.

By sub. sec. (c) a company is deemed insolvent "if it exhibits a statement showing its inability to meet its liabilities:—Held, that the inability to meet liabilities means liabilities to creditors as distinguished from liabilities to shareholders. On the hearing of a petition based on such a statement the statement must be accepted as correct. *In re United Canneries*, 9 B. C. R. 528.

In order to enable a company to be wound up under this enactment it is not sufficient for the company to appear on the application and to admit that it is insolvent and that it consents to be wound up; the facts laid down by the Winding-up Act as evidence of insolvency must be disclosed in the material upon which the petition is based. *Re Grundy Store Co.* 7 O. L. R., 252.

4. Company Deemed Unable to Pay its Debts.—A company is deemed to be unable to pay its debts as they become due, whenever a creditor, to whom the company is indebted in a sum exceeding two hundred dollars then due, has served on the company, in the manner in which process may legally be served on it in the place where service is made, a demand in writing, requiring the company to pay the sum so due, and the company has, for ninety days, in the case of a bank, and for sixty days in all other cases, next succeeding the service of the demand, neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor. R. S., c. 129, s. 6.

Service of the specially indorsed writ of summons in an action against the company to recover the amount of a creditor's claim is not a sufficient demand in writing within the meaning of this section. *In re Abbott-Mitchell Iron & Steel Company* (1901), 2 O. L. R. 143.

Sec. 4 specifies the only way of proving a case under clause (a) of sec. 3. Therefore where the petitioner alleged that the company was unable to pay its debts as they became due, but gave no evidence of the demand in writing and neglect by the company to pay within 60 days thereafter. Held, that the petition must be dismissed, unless amended and fresh evidence given. *In re Ewart Carriage Works* (1904), 8 O. L. R. 527.

5. Commencement of Winding Up.—The winding up of the business of a company shall be deemed to commence at the time of the service of the notice of presentation of the petition for winding up. R. S., c. 129, s. 7.

APPLICATION.

6. Application.—This Act applies to all corporations incorporated by or under the authority of an Act of Parliament of Canada, or by or under the authority of any Act of the late province of Canada, or of the province of Nova Scotia, New Brunswick, British Columbia, or Prince Edward Island, and whose incorporation and the affairs whereof are subject to the legislative authority of the Parliament of Canada, and also incorporated banks, savings banks, incorporated insurance companies, loan companies having borrowing powers, building societies having a capital stock, and incorporated trading companies, doing business in Canada, wheresoever incorporated; and—

(a.) Which are insolvent; or—

(b.) Which are in liquidation or in process of being wound up, and on petition by any of their shareholders or creditors, assignees or liquidators, ask to be brought under the provisions of this Act. R. S., c. 129, s. 3; 52 V., c. 32, s. 3.

The provisions of the Dominion Winding-up Act do not apply to a company incorporated under the Ontario Companies Act, unless such company is shown to be insolvent. *Re Cramp Steel Co. Ltd.*, 1908, 16 O. L. R., 230.

7. Certain Corporations Excepted.—This Act does not apply to building societies which have not a capital stock, or to railway or telegraph companies. R. S., c. 129, s. 3; 52 V., c. 32, s. 3.

It has been decided that the Act is *intra vires* the Dominion Parliament, and that it applies to an insurance company incorporated by a provincial legislature. *Re Clarke v. The Union Fire Insurance Company* (1887), (2) 14 O. R. 619; affirmed on appeal (Burton J. A., dissenting), (1889), 16 Ont. A. R. 161; see also *Re Eldorado Union Store Company*, 6 Russ & Geld. 514. But the Act does not apply to a foreign company, *i. e.*, one domiciled in another country. *Merchants Bank of Halifax v. Gillespie*, 10 S. C. R., 512.

A winding-up order was made in the case of a company incorporated in England, but carrying on business in Nova Scotia, and having its principal place of business in that province. On appeal it was held by the Supreme Court of Canada (reversing the Supreme Court of N. S.) that the Act (45 Vic., c. 23) was not applicable to such a company. It was considered that the statute should be construed as not affecting a foreign company, *as* otherwise it would be *ultra vires*, and to that extent void. *Merchants Bank of Halifax v. Gillespie, Moffatt & Co.* (1884), 10 S. C. R. 312.

In a similar case in Ontario (argued after the decision was rendered in the above case, but before the same was reported), Proudfoot, J., declined to follow the judgment of the Supreme Court, and to set aside a winding-up order granted by Ferguson, J., respecting a foreign company. His reasons for refusing to do so were partly that the conclusions as to the *ultra vires* of any such enactment were only *obiter dicta* of two of the judges of the Supreme Court (Strong & Henry, J. J.), but mainly because he was of the opinion that he had no power to set aside the order, and that that could only be done by a divisional court. *In re Lake Superior Native Copper Co., Ltd., re Plummer* (1885), 9 O. R. 277, at pp. 280-1.

In England the provisions of the Companies' Act, 1881, relating to winding up, have been held applicable to a company formed in India, incorporated under Indian law, and having its principal place of business there, but also having a branch office in England. *In re Commercial Bank of India, L.R.*, 6 Eq. 517. But otherwise as regards a foreign company carrying on business in England through agents, but having no branch office of its own in that country. *In re Lloyd Generale Italiano* (1885), L. R., 29, C. D. 219. In *Wyld v. Hamilton Mutual Insurance Company* (1883), 6 O. R. 118, it was held that by virtue of this section (then sec. 3, of 45 Vic., c. 23), the Act was retroactive in so far as that it applied to companies which had become insolvent before the date of the Act.

PART I.

GENERAL.

LIMITATION OF PART.

8. Subject to Part II.—In the case of a bank other than a savings bank, the provisions of this part are subject to the provisions of Part II of this Act. R. S., c. 129, ss. 4 and 97.

9. Subject to Part III.—In the case of life insurance companies, and of insurance companies doing life insurance and other insurance in so far as relates to the life insurance business of such companies the provisions of this Part are subject to the provisions of Part III of this Act. R. S., c. 129, ss. 4 and 105.

10. Subject to Part IV.—In the case of insurance companies other than life insurance companies and of insurance companies doing life insurance and other insurance, in so far as relates to such other insurance, the provisions of this part are subject to the provisions of Part IV. of this Act. R. S., c. 129, ss. 4 and 115.

WINDING UP ORDER.

11. In what Cases Winding-Up Order may be Made.—The Court may make a winding-up order:—

(a.) Where the period, if any, fixed for the duration of the company by the Act, charter or instrument of incorporation has expired; or where the event, if any, has occurred, upon the occurrence of which it is provided by the Act or charter or instrument of incorporation that the company is to be dissolved;

(b.) Where the company at a special meeting of shareholders called for the purpose has passed a resolution requiring the company to be wound up;

(c.) When the company is insolvent;

(d.) When the capital stock of the company is impaired to the extent of twenty-five per cent. thereof, and when it is shown to the satisfaction of the court that the lost capital will not likely be restored within one year; or

(e.) When the court is of opinion that for any other reason it is just and equitable that the company should be wound up. 52 V., c. 32, s. 4.

APPLICATION FOR ORDER.

12. By Whom Made.—The application for such winding-up order may, in the cases mentioned in paragraphs (a.) and (b.) of the last preceding section, be made by the company or by a shareholder, and in the case mentioned in paragraph (c.) of the last preceding section by the company or by creditor for the sum of at least two hundred dollars, or, except in the case of banks and insurance corporations, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars and in the other cases mentioned in the said section, by a shareholder holding shares in the capital stock of the company to the amount of at least five hundred dollars. R. S., c. 129, s. 8; 52 V., c. 32, s. 5; 62-63 V., c. 43, s. 4.

13. How and Where Made.—Such application may be made by petition to the court in the Province where the head office of the company is situated, or if there is no head office in Canada, then in the Province where its chief place or one of its chief places of business is situated.

2. Notice of Application.—Except in cases where such application is made by the company, four days' notice of the application shall be given to the company before the making of the same. R. S., c. 129, s. 8; 52 V., c. 32, s. 6.

It is to be observed that this Act provides for compulsory winding up only; and the application can only be made by one who is a

creditor for at least two hundred dollars. In this respect it differs from the English statute, which embodies elaborate provisions for voluntary winding up. In Canada a voluntary winding up may sometimes be effected under various provincial enactments, *e. g.*, the Ontario Winding-up Act provides that the application may be made by a shareholder; or again, a company in insolvent circumstances may make a voluntary assignment for the benefit of its creditors. The Court will generally adopt the wishes of the majority of the creditors if they are not unanimous as to which mode should be followed. *The Wakefield Rattan Company v. The Hamilton Whip Company, Limited* (1893), 24 O. R. 107.

The Dominion Winding-up Act cannot be put into operation by shareholders, but is intended to be put into operation at the instance of creditors only. In this respect it is like the Insolvent Act of 1875. *Re Union Ranch Company of Canada, Limited* (1888), 15 O. R. 307. See also, *Re Steel Company of Canada, Limited*, 5 Russ & Geld (N. S.) 55.

As regards the necessary notice of application to the company referred to in this section, see *In re Arnold Chemical Company* (1901), 2 O. L. R. 671; *In re Abbott-Mitchell Iron & Steel Company* (1901), 2 O. L. R. 143.

Service of a petition for a winding-up order on an assignee for the benefit of creditors of a company is not service as required by this section, such assignee not being an agent of the company for the purposes of such service within Ontario Cons. Rule, 159, at any rate when the president and directors are readily accessible and have given no express authority to the assignee to accept such service. *In re Rodney Casket Co.*, 1906, 12, O. L. R., 409.

14. power of Court on Application.—The court may on application for a winding-up order, make the order applied for, dismiss the petition with or without costs, adjourn the hearing conditionally or unconditionally, or make any interim or other order that it deems just. R. S., c. 129, s. 9.

The court has a wide discretionary power under this section. When it appeared, on the application for a winding-up order, that the company had previously made a voluntary assignment for the benefit of its creditors, and that the great majority both in number and value of the creditors wished the liquidation to be proceeded with thereunder, the application was refused. *The Wakefield Rattan Company v. The Hamilton Whip Company (Limited)*, (1893), 24 O. R. 107. But in a later case it was held that where the insolvency was acknowledged, the Court has no discretion under this section to refuse to grant a winding-up order, upon the petition of a creditor substantially interested, even though the company has already made a voluntary assignment which is satisfactory to the majority of its creditors. *In re W. Lamb Mfg. Company* (1900), 32 O. R. 243. But in a still later case (*Re Maple Leaf Dairy Co.* (1901), 2 O. L. R. 590), it was held that the court had a discretion to grant or withhold a winding-up order under this section. Boyd, C., dissenting from the decision given by Meredith, C.J., in the above cited case of *Re William Lamb Manufacturing Company*, 32 O. R. 243. In the course of his judgment Boyd, C., cited the following quotation from the judgment of Cozen-Hardy, J., in the case of *In re Haycraft Gold Reduction Company* (1900), 7 Mans. 243, at p. 249. "The existence of a voluntary winding up is a strong reason why the Court should decline to interfere, but circumstances may justify interference. The most common instance no doubt is where the Court holds that the resolution to

winding up voluntarily has been passed fraudulently, but that is not exhaustive." See also, *in re West Hartlepool Ironworks Company* (1875), L. R., 10 Ch. 618. Per Kay, J., *In re New York Exchange* (1888), 39 Ch. D. 415. pp. 417 and 419. *In re Greenwood & Company* (1900), 7 Mans. 456.

When an assignment for the benefit of creditors has been made by a company a creditor of the company is not entitled as of course to a winding-up order. A discretion to grant or refuse the order exists notwithstanding the assignment. Order refused under the circumstances of this case: *In re The Strathy Wire Fence Co.*, 1904, 8 O. L. R., 186.

When a creditor presents a petition for winding up in ignorance of a prior petition, he is entitled to costs only up to the time when he has notice of the latter. But if he has good reason to believe that the other petition is not *bona fide*, he is justified in proceeding, and may then be allowed all his costs. *In re General Financial Bank*, L. R., 20 C. D. 276. A petitioner who withdraws his petition for a winding-up order will generally be compelled to pay the costs of the parties appearing. But the matter is wholly within the discretion of the court. *In re Nacupai Gold Mining Company*, 28 C. D. 65. *In re District Bank of London*, 35 C. D. 576.

Where there were two petitioners for a winding-up order against one company, although orders were made under both petitions, the conduct of the proceedings was given to the later petitioner, a creditor for money paid, in preference to the earlier one, who was shown to be an employee of and in close touch with the company. *Re Estates Limited*. 1904, 8 O. L. R., 564.

15. Proceedings May be Adjourned.—If the company opposes the application, on the ground that it has not become insolvent or that its suspension or default was only temporary, and was not caused by any deficiency in its assets or that the capital stock is not impaired to the extent aforesaid, or that such impairment does not endanger the capacity of the company to pay its debts in full, or that there is a probability that the lost capital will be restored within a year or within a reasonable time thereafter, and shows reasonable cause for believing that such opposition is well founded, the court, in its discretion, may, from time to time adjourn proceedings upon such application for a time not exceeding six months from the date of the application, and may order an accountant, or other person, to inquire into the affairs of the company, and to report thereon within a period not exceeding thirty days from the date of such order. R. S., c. 129, s. 10; 52 V., c. 32, s. 8.

16. Duty of Company and its Officers if Inquiry is Ordered.—Upon the service of the company of an order made under the last preceding section, for an inquiry into the affairs of the company, the president, directors, officers and employees of the company, and every other person, shall respectively exhibit to the accountant or other person named for the purpose of making such inquiry, the books of account of the company, and all inventories, papers and vouchers referring to the business of the company or of any person therewith, which are in his or their possession, custody or control, respectively; and they shall also respectively give all such information as is required by such accountant or other person as aforesaid, in order to form a just estimate of the affairs of the company. R. S., c. 129, s. 11.

17. Power of the Court Upon Report of Inquiry.—Upon receiving the report of the accountant or person ordered to inquire

into the affairs of the company, and after hearing such shareholders or creditors of the company as desire to be heard thereon, the court may either refuse the application or make the winding-up up order. R. S., c. 129, s. 12.

STAYING PROCEEDINGS.

18. Actions Against Company may be Stayed.—The court may, upon the application of the company, or of any creditor or contributory, at any time after the presentation of a petition for a winding-up order, and before making the order, restrain further proceedings in any action, suit or proceeding against the company, upon such terms as the court thinks fit. R. S., c. 129, s. 13.

A company incorporated by Imperial charter went into liquidation in England, and afterwards a winding-up order was obtained in Ontario. P., a creditor of the company, domiciled in Ontario, having brought an action against the company, in the State of Michigan, with the object of attaching a steamer belonging to the company, which was wintering there, an *ex parte* injunction was obtained in Ontario, restraining him from proceeding with the action. On motion to make the injunction perpetual, it appeared that both the secretary and the managing director of the company had repeatedly assured P. that the company was perfectly solvent, and that but for these representations he would have brought action before the date of the winding-up order. It was held that, having postponed his action at the request of the company, he was entitled to whatever preference he could obtain by his action, and the motion to continue the injunction was refused. *In re Lake Superior Native Copper Company, Limited. Re Plummer*, (1885), 9 O. R. 277. But see *In re Oriental Inland Steam Co., ex parte Scinde Railway Co.* (1874), L. R. 9 Ch. 557. And *Moore v. Anglo-Italian Bank* (1879), L. R., 10 C. D., 681.

See also (as to effect of a creditor postponing action at request of company), *Ex parte Railway Steel and Plant Co., in re Taylor*, (1878), 8 C. D. 183. An action taken by a creditor to recover against the assets of an insolvent company in a foreign country may be restrained. *In re South Eastern of Portugal Railway Company*, 17 W. R. 982. And see, *Robillard v. Blanchet* (1901), R. J. S. C. 383.

There is jurisdiction under this section to restrain proceedings against a company, even in actions outside the ordinary territorial jurisdiction of the court; and the enforcing of an execution is a proceeding within this section:—Held, therefore, that there was jurisdiction in the High Court of Justice of Ontario to make an order staying proceedings under an execution in the hands of the sheriff of a county in the Province of New Brunswick, as had been done in this case. But the sheriff, having, notwithstanding, proceeded with the sale under the execution against the lands of the company, and executed a deed of the same to the purchaser:—Held, that there was no jurisdiction in the court under the Winding-up Act to make an order summarily declaring the sale void.

Re Tobique Gypsum Company, Costigan v. Langley, 6 O. L. R. 515.

19. Court may Stay Winding Up Proceedings.—The court may, upon the application of any creditor or contributory, at any time after the winding-up order is made, and upon proof, to the satisfaction of the court, that all proceedings in relation to the

winding up ought to be stayed, make an order staying the same, either altogether or for a limited time on such terms and subject to such conditions as the court thinks fit. R. S., c. 129, s. 18.

EFFECT OF WINDING-UP ORDER.

20. Company to Cease Business.—The company, from the time of the making of the winding-up order shall cease to carry on its business, except in so far as is, in the opinion of the liquidator, required for the beneficial winding up thereof; but the corporate state and all the corporate powers of the company, notwithstanding it is otherwise provided by the Act, charter or instrument of incorporation, shall continue until the affairs of the company are wound up. R. S., c. 129, s. 15.

The effect of a winding-up order is not in any way to cut down the rights of a lessee of the property of the company with option to purchase. Company held liable in damages by reason of the liquidator's selling the property without giving the lessee an opportunity to exercise his option. *McCarter v. York County Loan Co.*, 1907, 14 O. L. R., 420.

21. Transfer of Shares Void.—All transfers of shares, except transfers made to or with the sanction of the liquidator, under the authority of the court, and every alteration in the status of the members of the company, after the commencement of such winding up, shall be void. R. S., c. 129, s. 15.

22. After Winding Up Order, Actions Against Company Stayed.—After the winding-up order is made, no suit, action or other proceeding shall be proceeded with or commenced against the company, except with the leave of the court and subject to such terms as the court imposes. R. S., c. 129, s. 16.

Sec. 4 of 30 and 31 Vic., c. 209, enacted that from the time it came into force "no actions, suits, executions, attachments or other proceedings against the L. C. and D. Ry. Company should be continued or commenced during a certain time, except by leave of the Court of Chancery. Held, that the taxation of costs in a suit, which had terminated before the passing of the Act, was a "proceeding," and could not be commenced without the leave specified by the Act, *Reg. v. London, Chatham & Dover Ry. Co.* (1868), L. R., 3 Q. B. 170.

In an English case it was held under a section in the English Winding-Up Act, of 1862 (sec. 87), similar to sec. 16, that where a creditor had delayed his action at the request of the secretary of the company, he was entitled in priority to other creditors to the benefit of a judgment obtained after the making of the winding-up order. Per *Hall V. C.*, in *Ex parte Railway Steel & Plant Co. In re Taylor* (1878), 8 C D. 183. See also cases cited under sec. 13, *supra*.

Previous to an order for the winding-up of the company being granted, an action had been brought by the company against a shareholder for unpaid calls, and the shareholder had delivered a defence and counterclaim praying that his application for shares should be cancelled on the ground of misrepresentation and of false and fraudulent statements in the prospectus:—Held, that the shareholder could have in the winding-up proceedings all the relief that he claimed by his defence and counterclaim; and his application for leave to proceed in the action notwithstanding the winding-up order was therefore refused, but leave to apply again was reserved. Dictum of Strong, C. J., in *Re Hess Manufacturing Co.*,

23 Can S. C. R. 644, at pp. 665-6, explained. Leave to appeal from the order of a judge in court affirming the dismissal by the referee of the application for leave to proceed was refused.

In re Pakenham Pork Packing Co., 40 C. L. J. 35.

23. Executions, Etc., Against Company Void.—Every attachment, sequestration, distress or execution put in force against the estate or effects of the company after the making of the winding-up order shall be void. R. S., c. 129, s. 17.

But notwithstanding this section, the court has power under sec. 16, to give leave to a creditor, to proceed with an execution. *In re London Cotton Co.* (1866), L. R. 2 Eq., 53. But the granting or refusing of such leave is wholly within the discretion of the court. *In re Dimson's Estate Fire Clay Co.* (1874), L. R. 19 Eq. 202. And *In re University Disinfectors Co.* (1875), L. R. 20, Eq. 162. And when a judge before whom the winding-up proceedings are being conducted has, in the exercise of that discretion, given a creditor leave to proceed against the company, an Appellate Court will not disturb his decision. *Thames Plate Glass Co. v. Land & Sea Telegraph Construction Co.* (1871), L. R. 6 Ch. 643.

A person executing a judgment against the goods of a company in liquidation may be condemned for costs incurred by the liquidator on an opposition to such execution.

The Great Northwestern Telegraph Co. v. La Compagnie du Journal, Le Monde, 5 Que. P. R. 379.

APPOINTMENT OF LIQUIDATORS.

24. Liquidator to be Appointed.—The court, in making the winding-up order, may appoint a liquidator or more than one liquidator of the estate and effects of the company. R. S., c. 129, s. 20.

45 Vic., c. 23, sec. 24, as amended by 47 Vic., c. 38, sec. 4; reads:—"The court in making the winding-up order *must* appoint a liquidator but no such liquidator shall be appointed unless previous notice be given to the creditors, contributories, shareholders and members in the manner and form prescribed by the court." It was held that under this section it was essential to validity of a winding-up order that it should contain the appointment of a liquidator, and that that duty could not be delegated by the court to a master or other officer of the court. See judgments of Burton and Osler, J. J. A., "*In re Union Fire Insurance Co.*" (1886), 13 A. R. 268. These dissenting judgments were affirmed on appeal, and Court of Appeal reversed, *sub nomine Shoolbred v. Union Fire Insurance Co.* (1886), 14 S. C. R., 624.

See the remarks of Gwynne, J., in that case as to delegation of power of appointment of liquidator, "*Ib.*, p. 628 *et seq.*, *Re Great Southern Mysore Gold Mining Co.*" (1883), 48 L. T.; N. S. 11 and *In re Agriculture Cattle Insurance Co.* (1861), 3 DeG. F. & J. 194.

In the Supreme Court the judgments in the *Union Fire Insurance Co.*'s case were mainly on the ground that the appointment under the order appealed from was made without the notice required by the statute. It will be noticed that the section now reads "The court in making a winding-up order may appoint a liquidator," etc. The change was made in the revision of 1886.

An Appellate Court will not interfere with the appointment of a liquidator made by a judge, that being a matter wherein he exercise his discretion. *In re International Contract Co.* (1866), L. R., 1 Ch. 523. *In re London, Bombay and Mediterranean Bank* (1866), L. R. 1 Ch. 525. Formerly in England the liquidator might be ap-

pointed when the petition for the winding-up order was presented. (*Ib.*) But the practice now prevailing there is to direct a reference to chambers for that purpose. *In re General Financial Bank* (1882), L. R. 20 C. D. 276.

25. Acting Liquidator.—If more than one liquidator is appointed, the court may declare whether any act to be done by a liquidator is to be done by all or any one or more of the liquidators. R. S., c. 129, s. 23.

"Speaking generally it is not proper for one liquidator to delegate duties or powers to another. They should act in conjunction, and give their constituents the benefit of their joint judgment and discretion in all matters pertaining to their office. If any exigency arises or if it is not found practicable to act in conjunction, the court may exercise its jurisdiction under this section." Per Boyd, C., in *Re The Central Bank of Canada* (1887), 15 O. R. 312.

26. Additional Liquidators.—The court may, if it thinks fit, after the appointment of one or more liquidators, appoint an additional liquidator or liquidators. R. S., c. 129, s. 24.

27. Notice Previous to Appointment.—No liquidator aforesaid shall be appointed unless a previous notice is given to the creditors, contributories, shareholders or members, and the court shall by order direct the manner and form in which such notice shall be given and the length of such notice. R. S., c. 129, s. 20.

28. Security.—The court shall also determine what security shall be given by a liquidator on his appointment. R. S., c. 129, s. 24.

29. Provisional Liquidator.—The court may, on the presentation of the petition for a winding-up order or at any time thereafter and before the first appointment of a liquidator, appoint provisionally a liquidator of the estate and effects of the company, and may limit and restrict his powers by the order appointing him. R. S., c. 129, s. 26; 52 V., c. 32, s. 12.

30. Incorporated Company may be Appointed.—An incorporated company may be appointed liquidator to the goods and effects of a company under this Act, and if an incorporated company is so appointed, it may act through one or more of its principal officers designated by the court. R. S., c. 129, s. 21.

2. Where under the laws of any province a trust company is accepted by the courts of such province, and is permitted to act, as administrator, assignee or curator without giving security, such trust company may be appointed liquidator of a company under this Act, without giving security. (Added by 6-7 Edw. VII., c. 51, s. 2.)

31. Powers of Directors to Cease.—Upon the appointment of the liquidator, all the powers of the directors shall cease, except in so far as the court or the liquidator sanctions the continuance of such powers. R. S., c. 129, s. 34.

32. Resignation and Removal.—A liquidator may resign or may be removed by the court on due cause shown, and every vacancy in the office of liquidator shall be filled by the court. R. S., c. 129, s. 27.

The removal of a liquidator is not merely a matter of judicial discretion, and some unfitness must be shewn before the order will be made. *In re Sir John Moore Gold Mining Co.* (1879), L. R., 12 C. D. 325. But on the other hand, the "due cause" does not refer to personal unfitness alone, and the court may remove a liquidator

whenever it is of opinion that such removal is to the advantage of those interested in the realization of the assets. *In re Adam Eyton, Ltd., Ex parte Charlesworth*, L. R. (1887), 36 C. D. 299. A liquidator may appeal from an order removing him, (*Id.*).

The appointment of a liquidator to a company should be set aside if a person interested shews that such an appointment has been made without notice to the creditors, contributories and shareholders of the company.

Stimson v. Northwest Cattle Co. and Allan, 5 Que. P. R. 181.

POWERS AND DUTIES OF LIQUIDATORS.

33. Duties after Appointment.—The liquidator, upon his appointment, shall take into his custody or under his control, all the property, effects and choses in action to which the company is or appears to be entitled, and he shall perform such duties in reference to winding up the business of the company as are imposed by the court or by this Act. R. S., c. 129, s. 30.

34. Powers.—The liquidator may, with the approval of the court, and upon such previous notice to the creditors, contributories, shareholders or members, as the court orders—

(a.) **SUITS.**—Bring or defend any action, suit or prosecution or other legal proceeding, civil or criminal, in his own name as liquidator or in the name or on behalf of the company, as the case may be;

(b.) **BUSINESS OF COMPANY.**—Carry on the business of the company so far as is necessary to the beneficial winding up of the same;

(c.) **SALE OF PROPERTY.**—Sell the real and personal and heritable and movable property, effects and choses in action of the company, by public auction or private contract, and transfer the whole thereof to any person or company, or sell the same in parcels;

(d.) **GENERAL ACTS.**—Do all acts, and execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose use, when necessary, the seal of the company;

(e.) **PROVING IN BANKRUPTCY.**—Prove rank, claim and draw dividends in the matter of the bankruptcy, insolvency or sequestration of any contributory, for any sum due the company from such contributory, and take and receive dividends in respect of such sum in the matter of the bankruptcy, insolvency or sequestration as a separate debt due from such contributory and ratably with the other separate creditors;

(f.) **DRAWING AND INDORSING BILLS AND NOTES.**—Draw, accept, make and indorse any bill of exchange or promissory note in the name and on behalf of the company;

(g.) **RAISING FUNDS.**—Raise upon the security of the assets of the company, from time to time, any requisite sum or sums of money; and

(h.) **GENERAL POWERS.**—Do and execute all such other things as are necessary for winding up the affairs of the company and distributing its assets.

2. Company Liable on such Notes and Bills.—The drawing accepting, making or indorsing of every such bill of exchange or promissory note as aforesaid, on behalf of the company, shall have the same effect, with respect to the liability of such company, as if such bill or note had been drawn, accepted, made or indorsed by or

on behalf of such company in the course of the carrying on of its business;

3. **No Delivery of Assets Needed.**—No delivery of the whole or of any part of the assets of the company shall be necessary to give a lien to any person taking security as aforesaid upon the assets of the company. R. S., c. 29, s. 31; 62, 63 V., c. 42, s. 3.

In actions to recover property which belonged to the company itself before the winding up order was made, the liquidator must sue in the name of the company. *Turquand v. Kirby* (1867), L. R., 4 Eq. 123. But it seems that such action may be so brought without the sanction of the court, but then the company runs the risk of costs. *Sarnia Agricultural Implement Manfg. Co., Ltd. v. Hutchinson* (1889), 17 O. R. 676. An objection against the way in which the action is brought cannot be raised after the evidence has been taken. The proper course is to move in chambers to dismiss the action for want of authority to sue. (*Id.*) See also *McDonald v. Carrodi*, 1 Ch. Chambers (Par. b.).

The facts, that if the business was carried on, the mortgagees, who have foreclosed, would have been enabled to dispose of the works in question to better advantage, and that the facility which would thus have been afforded to purchasers of machinery manufactured by the company to have the same repaired would have improved the chances of obtaining payment of outstanding purchase notes, were not considered sufficient grounds to justify the Court in sanctioning its continuance by the liquidator. *In re The Haggert Bros. Manfg. Co., Ltd.* (1893), 20 Ont. A. R. 597.

The court will only sanction the contract of a liquidator carrying on the business of the company when it is shewn that it is not one which the court has power to sanction. *In re Wreck Recovery & Salvage Co.* (1880). L. R., 15 C. D. 353.

In winding up proceedings the referee offered certain property for sale by tender, the advertisement stating that the sale would be "peremptorily" closed at a stated hour. At that time only one tender had been received, and the referee held the sale open until the arrival of the mail by a train which was late. This brought two more tenders, and when these were opened, the agent of the second highest tenderer (who was also the chief beneficiary under the mortgage) put in a tender higher than any of the others. The referee directed that notice of this offer should be given to the other tenderers, and, on a subsequent day, as it was still the highest tender, he accepted it—*Held*, that he was justified in doing so. *Re Alger & The Sarnia Oil Co.* (1891), 21 O. R. 441, and 19 Ont. A. R. 446.

Under this section and section 15, a company in liquidation retains its corporate powers, including the power to sue, although such powers must be exercised through the liquidator under the authority of the Court. The liquidator must sue in his own name or in that of the company, according to the nature of the action; in his own name where he acts as representative of creditors and contributories; in that of the company to recover either its debts or its property. Where in the Province of Quebec, liquidators sued in their own name to recover a debt due to the company:—*Held*, that the error was one of form, which the Court had power to give leave to amend under sec. 516 of the Code of Civil Procedure. The defendants having admitted the debt and pleaded set-off, and not having excepted to the form of the action, leave to amend should be given in the sound exercise of judicial discretion.

Kent v. La Communauté des Soeurs de la Providence (1903) A. C. 220.

Where an action is brought by the liquidator of a company in liquidation in his own name, he is personally liable for costs; the fact that he obtained leave from the court to sue will not relieve him of his liability in this respect.

Jackson v. Cannon, 10 B. C. R. 73.

35. When Solicitor may be Appointed.—The liquidator may, with the approval of the court, appoint a solicitor or law agent to assist him in the performance of his duties. R. S., c. 129, s. 32.

36. Debts Due to the Company may be Compromised.—The liquidator may, with the approval of the court, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, demands and matters in dispute in any way relating to or affecting the assets of the company or the winding up of the company upon the receipt of such sums, payable at such times, and generally upon such terms, as are agreed upon;

2. Security May be Taken.—The liquidator may take any security for the discharge of such calls, debts, liabilities, claims, demands, or disputed matters, and give a complete discharge in respect of all or any such calls, debts, liabilities, claims, demands or matters. R. S., c. 129, s. 33.

The court has power to sanction an agreement between contributories and creditors of an insolvent company assented to by both classes, whereby it is provided that the creditors shall accept a composition. *In re Commercial Bank Corporation of India & the East* (1869), L. R., 8 Eq. 241.

The power to sell is conferred upon the liquidator not upon the court, though he must obtain the sanction or approval of the court before he exercises the power. *In re Canada Woollen Mills* (Long's appeal), 1905, 9, O. L. R. 367.

37. Creditors may be Compromised.—The liquidator may, with the approval of the court, make such compromise or other arrangement with creditors or persons claiming to be creditors of the company as he shall deem expedient. R. S., c. 129, s. 61.

38. Court may Provide as to Powers of Liquidator.—The court may provide by any order subsequent to the winding-up order, that the liquidator may exercise any of the powers conferred upon him by this Act, without the sanction or intervention of the court. 52 V., c. 32, s. 12.

APPOINTMENT OF INSPECTORS.

39. Inspectors.—The court may appoint at any time when found advisable one or more inspectors whose duty it shall be to assist and advise the liquidator in the liquidation of the company. 62-63 Vic., c. 42, s. 1.

An inspector is in a fiduciary position as regards the disposal of the assets and cannot, without the consent of all persons interested, become the purchaser thereof. *In re Canada Woollen Mills, Ltd.* (Long's appeal), 1905, 9, O. L. R. 367.

REMUNERATION OF LIQUIDATORS AND INSPECTORS.

40. Remuneration.—The liquidator shall be paid such salary or remuneration, by way of percentage or otherwise, as the court directs, upon such notice to the creditors, contributories, shareholders or members, as the court orders;

2. Distribution of.—If there is more than one liquidator, the remuneration shall be distributed amongst them in such proportions as the court directs. R. S., c. 129, s. 28.

41. Remuneration of Inspectors.—The court shall determine the remuneration, if any is deemed just, of the inspector or inspectors. 62-63 Vic., c. 42, s. 2.

The intention of this section is not that the remuneration of the liquidators is necessarily to be increased because there are three to be paid instead of one. Payment is usually a percentage based on the time occupied, the work done, and the responsibility imposed, and when thus fixed it is paid to the liquidator, or divided amongst them if there be more than one. *Re The Central Bank of Canada* (1887), 15 O. R. 309.

In winding up an insolvent bank, when the liquidators are paid by a percentage, it is proper to take into consideration amounts adjusted or set off, but not actually received by the liquidators. In this case they were allowed a commission of $2\frac{1}{4}$ per cent. on moneys actually collected, and $1\frac{1}{4}$ per cent. on those so adjusted or set off. *In re Central Bank v. Lye's Claim* (1892), 22 O. R. 247; following *Re Mysore Reefs Gold Mining Co.* (1887), 34 C. D. 14. And see *Thomson v. Freeman* (1868), 15 Grant 384. (This was not the case of a bank, however.)

A claim for remuneration must be made by all the liquidators, On an application to divide the commission between three liquidators, Lord Romilly, M. R., said: "I cannot make the order asked. It is founded upon a misconception of what is the true position of the liquidators. When joint liquidators are appointed it is a species of partnership, and, in the absence of any agreement among themselves as to the division of the remuneration, the court would leave it to be settled among themselves what proportion each would take." *Re The Langham Hotel Co.* (1868), 17 W. R. 463.

DEPOSITING IN BANK.

42. Moneys to be Deposited in Bank.—The liquidator shall deposit at interest in some chartered bank or post office savings bank or other Government savings bank designated by the court, all sums of money which he has in his hands belonging to the company, whenever and so often as such sums amount to one hundred dollars. R. S., c. 129, s. 35.

43. A Separate Account of Same in Name of Liquidator as such.—Such deposit shall not be made in the name of the liquidator individually, on pain of dismissal; but a separate account shall be kept for the company of the moneys belonging to the company in the name of the liquidator as such liquidator. R. S., c. 129, s. 36.

44. Balance on Hand by Liquidator to be Deposited after Winding up.—The liquidator shall, within three days after the date of the final winding up of the business of the company, deposit, at interest, in the bank appointed or designated as hereinbefore provided, any money belonging to the estate then in his hands not required for any other purpose authorized by this Act, with a sworn statement and account of such money, and that the same is all that he has in his hands. R. S. c. 129, s. 40.

45. Penalty for Neglect.—In case any liquidator shall not, within three days after the date of the final winding up of the business of the company deposit in the bank, appointed or designated as hereinbefore provided,

any money belonging to the estate of which he is such liquidator, then in his hands, he shall be deemed a debtor to His Majesty for such money, and may be compelled as such to account for and pay over the same. R. S., c. 129, s. 40.

COURT DISCHARGING FUNCTIONS OF LIQUIDATOR.

46. If no liquidator.—If at any time there is no liquidator, all the property of the company shall be deemed to be in the custody of the court. R. S., c. 129, s. 25.

47. Provision for Discharge of Liquidator, and Distribution by the Court.—Whenever a company is being wound up and the realization and distribution of its assets has proceeded so far that in the opinion of the court it becomes expedient that the liquidator should be discharged and that the balance remaining in his hands of the moneys and assets of the company can be better realized and distributed by the court, the court may make an order discharging the liquidator and for payment, delivery and transfer into court, or to such officer or person as the court may direct, of such moneys and assets, and the same shall be realized and distributed, by or under the direction of the court, among the persons entitled thereto, in the same way, as nearly as may be, as if the distribution were being made by the liquidator.

2. Disposal of Books and Documents.—In such case the court may make an order directing how the books, accounts and documents of the company and of the liquidator may be disposed of, and may order that they be deposited in court or otherwise dealt with as may be thought fit.—55-56 V., c. 28, s. 2.

CONTRIBUTORIES.

48. List of Contributors.—As soon as may be after the commencement of the winding up of a company the court shall settle a list of contributors. R. S., c. 129, s. 42.

49. Classes of Contributors Distinguished.—In the list of contributors, persons who are contributors in their own right shall be distinguished from persons who are contributors as representatives of or liable for the debts of others. R. S., c. 129, s. 43.

50. Adding Heirs to List.—It shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory, but such heirs or devisees may be added as and when the court thinks fit. R. S., c. 129, s. 43.

51. Liability of Shareholders and their Representatives.—Every shareholder or member of the company or his representative shall be liable to contribute the amount unpaid on his shares of the capital, or on his liability to the company, or to its members or creditors, as the case may be, under the Act, charter or instrument of incorporation of the company, or otherwise;

2. Liability and Asset.—The amount which he is liable to contribute shall be deemed an asset of the company, and a debt due to the company, payable as directed or appointed under this Act. R. S., c. 129, s. 44.

K. signed a stock book headed as follows: "We, the undersigned, do hereby subscribe for shares of the capital stock of the Alliance Insurance Co., and agree to take the number of shares and for the amount set opposite our respective signatures, and to pay on

account thereof to the secretary of the said company 10 per cent. of the amount of stock subscribed by us, respectively, within 30 days from the day of our several subscriptions." The Act incorporating the company vested the shares in the persons who should subscribe for the same. K. never paid the ten per cent.—*Held* (reversing judgment of Ferguson, J., 7 O. R. 204, where case decided on another point), that K. had only contracted to take shares, and that, not having paid the 10 per cent., he never was a shareholder, and, therefore, was not liable as a contributory. *Re Standard Fire Insurance Co. (Kelly's Case)*, (1885), 12 Ont. A. R. 486. See also *Barker's Case*, and *Copp, Clark & Co.'s Case* (1885), 12 Ont. A. R. 486.

C. agreed to act as a director and gave his note for \$500. The president subscribed for 50 shares for him (\$500 being 10 per cent. thereon), and subsequently told C. that he need not take any notice of a call of 5 per cent., which was made. Afterwards the president absconded, and C. (who at that time had not paid anything on the \$500 note) gave a note for \$250 in payment of a 5 per cent. call. He alleged that he did so, not because he was liable, but because he understood that that would settle all claims which might be made on him—*Held*, that he was properly placed on the list of contributories. *Re Standard Fire Insurance Co. (Chisholm's Case)*, (1884), 7 O. R. 448 and 453.

T. signed a power of attorney to C. to subscribe for 20 shares of stock, and gave it to him on the understanding that it was not to be used unless he became a director of the company. T.'s name was entered as a shareholder, and his name appeared in advertisements as a director, but no board was formed with T. as a director, and he swore that he never saw the advertisements or knew that his name was in them as a director. When a five per cent. call was made he at once repudiated all liability—*Held*, that the stipulation that he should be a director was a condition precedent, and that, therefore, T. was not liable as a contributory. *Re Standard Fire Insurance Co. (Turner's Case)*, (1884), 7 O. R. 448 and 456.

C. subscribed for stock on the condition that he should be appointed solicitor of the company. He was so appointed, and received and retained for some years a certificate stating that he was the holder of 10 shares on which \$100 had been paid, this having been done by giving him credit in the books of the company for that amount for services rendered—*Held*, that he was properly placed upon the list of contributories. *Re Standard Fire Insurance Co. (Caston's Case)*, (1885), 7 O. R. 448 and 464; and (1885), 12 Ont. A. R. 486.

C. subscribed for 160 shares in the H. Co., the agreement being that 50 per cent. should be paid in quarterly instalments. At the first shareholder's meeting C. was elected a director and acted as such. A by-law was passed providing that the outstanding 50 per cent. might be called in at any time after a certain date on 30 days' notice. Subsequently, it was arranged by the president of the company that C. should subscribe for 80 shares in a new stock book in place of the original 160, and this was done, but was never communicated to the shareholders. A winding-up order having been made, C. claimed that he should only be made a contributory for 80 shares, on the grounds that the arrangement with the president was a valid compromise because he had only subscribed originally on the understanding (1) that the company should not go into operation before all the stock was subscribed, and (2) that only 50 per cent. of his subscription would have to

be paid—*Held*, that his actions as a director were at variance with the first contention, and that, as to the other, the subscription was unconditional, and though it particularly provided for the payment of 50 per cent., that was not inconsistent with the balance being paid subsequently, and, moreover, C. having been present and having made no dissent, must have been aware of the adoption of the by-law regarding the calling up of the other 50 per cent. *Fuches v. Hamilton Tribune Printing & Publishing Co. (Copp's Case)*, (1885), 10 O. R. 497.

A. agreed verbally to become a director of a company on condition that he should be satisfied that the capital was all subscribed, and that certain persons named in the prospectus as directors actually became so. He attended one meeting as a director, and signed a cheque with another director. Some days later, on receiving a letter of allotment of shares, he returned it and declined to act as director, on the ground that he was not satisfied respecting the matters referred to. The secretary notified him of the acceptance of his "resignation," and he had nothing further to do with the company—*Held*, that he was not liable as a contributory. *In re Peninsular, West Indian & Southern Bank (Austin's Case)*, (1866), L. R., 2 Eq. 435.

Where no share qualification is necessary the mere acting as a director and so attending meetings is not sufficient to fix one with knowledge that his name has been entered in stock book (and with consequent liability) if he neither applied for or received any notice of allotment of shares; for there is no presumption that a director knows the contents of the books of the company. *In re Wincham Ship-Building Boiler & Salt Co. (Hallmark's Case)*, (1878), 9 C. D. 329. And see, *In re Denham & Co.* (1883), 25 C. D. 752.

Persons who have been induced to take shares in a company by fraudulent concealment and the misrepresentation of important facts in a prospectus, on the part of the directors, cannot have their names struck from the list of contributories made after the winding-up order, for the rights of creditors have intervened. *In re Overend, Gurney & Co., ex parte Oakes & Peck. Oakes v. Turquand* (1867), L. R., 3 Eq. 576; L. R., 2 H. L. 325. And see also, *Tennent v. City Glasgow Bank* (1879), L. R., 4 App. Cas. 615.

But if, before a winding-up order is made, a person commencing suit to have his name removed from the list of members of the company on the ground that he was induced to become one by fraud and misrepresentation makes out his right to that relief, he will be entitled to the benefit of it although a winding-up order has been made between the time of the commencement of his action and the rendering of judgment therein. *Reese River Mining Co. v. Smith. In re Reese River Mining Co. (Smith's Case)*, (1868), L. R., 2 Ch. 604; (1869), L. R., 4 H. L. 64.

In England it has been held that the fact that a person allows his name to remain for some time on the list of contributories does not raise an equity against his applying to have it removed where no loss is incurred by the insolvent company which would not have arisen had an earlier application been made. *In re Mexican & South American Co. (Shewell's Case)*, (1867), L. R., 2 Ch. 387.

A shareholder wrote to the secretary of a company declining to have anything further to do with it, and asking that his deposit should be returned to him. The deposit was returned, but his name was not removed from the list of shareholders. Eighteen months later a winding-up order was made—*Held*, that he was not

a contributory. *In re Canadian Native Oil Co. (Fox's Case)*, (1868), L. R., 5 Eq. 118.

The holder of certain shares in a company failing to pay the calls made thereon, the directors authorized their manager to purchase them with the money of the company, but in his own name, for the purpose of cancellation. The stock was assigned by the holder to the manager by name as "manager in trust." The shares were not cancelled, and the dividends thereon were credited to the company; subsequently, the company became insolvent—*Held*, that in the absence of knowledge on the part of the transferor that the purchase was made for an illegal purpose, the manager should be placed on the list of contributories. *Re The Union Fire Insurance Co. (McCord's Case)*, (1891), 21 O. R. 264. See also *Cree v. Somervail* (1879), 4 App. Cas. 648, and *Re Central Bank (J. D. Henderson's Case)*, (1889), 17 O. R. 110.

A joint stock limited liability company, having assets worth more than double the amount of its issued stock and other liabilities, issued shares to its shareholders at a discount. Afterwards the company was re-incorporated, these shares being treated as fully paid up. Subsequently the company became insolvent and a winding-up order was obtained—*Held*, that these shareholders were not liable as contributories. *Re Owen Sound, Dry Dock, Ship-Building & Navigation Co., Ltd.* (1891), 21 O. R. 349.

W. had joined in the petition for incorporation, under the Ont. Joint Stock Co. Letters Patent Act, stating therein that he had taken 250 shares of the capital stock of the company. As a matter of fact, he had not done so, but after incorporation the directors passed a resolution giving him 50 paid-up shares for services rendered in connection with the formation of the company—*Held*, that he was liable as a contributory for at least the number of shares voted to him—*Semble*, he was liable for the number of shares mentioned in the petition. *Re Collingwood Dry Dock Ship-Building & Foundry Co. (Weddell's Case)*, (1890), 20 O. R. 107.

C. purchased shares in a company in 1878, but the company was not furnished with the papers requisite for the transfer until December, 1881. In February, 1882, his name was entered on the list of shareholders, but the directors did not formally approve the transfer until May, 1883. Before that time, in November, 1882,—C. was sued for unpaid calls, and that was the first intimation he had that the papers had been acted upon. C. took no steps to repudiate his position as a shareholder before the winding-up order, nor did it appear that he had been prejudiced by the failure of the company to notify him that the transfer had actually been made on the books—*Held*, that C. was rightly made a contributory. *Re Cole & The Canada Fire & Marine Insurance Co. (Close's Case)*, (1884), 8 O. R. 92. But where a company failed to register a transfer before a winding-up order was made, the Court would not relieve the defaulting company by adding the name to the register. *In re Joint Stock Discount Co. (Sichell's Case)*, (1867), L. R., 3 Ch. 119.

A person denying his liability as a contributory on the ground that he has transferred the shares in respect of which it is sought to make him liable must prove that at some time or other the books of the company showed that the shares were in the name of a transferee of his who could be made liable. *In re Imperial Mercantile Credit Association (Curtis' Case)*, (1868), L. R., 6 Eq. 455.

Confirmation by Infant Transferee.

An infant shareholder came of age six months after the commencement of winding-up proceedings, and was placed on the list

of contributories. More than a year after the list was settled, and nearly three years after she attained her majority, she applied, to have her name removed from the list—*Held*, that she was not precluded by the delay. *In re Alexandra Park Co. (Hart's Case)*, (1868), L. R., 6 Eq. 512.

It has been held in England that, where shares are transferred to an infant, the company being ignorant of the fact of his infancy, and he does not attain his majority until after a winding-up order has been made, the liquidator may decline to accept him as a shareholder, even though he is willing to confirm the transfer. *In re Asiatic Banking Corporation (Symon's Case)*, (1870), L. R., 5 Ch. 298. And see also the earlier case of *In re Continental Bank Corporation (Costello's Case)*, (1869), L. R., 8 Eq. 504, though in that instance the winding-up proceedings were of a voluntary nature, as is permitted by the Imperial Act.

An appearance at chambers through a solicitor to object to an order for a call is not of itself sufficient confirmation to render liable an infant who had attained his majority after a winding-up order had been made. *In re Commercial Bank Corporation of India and the East (Wilson's Case)*, (1869), L. R., 8 Eq. 240.

A shareholder transferred his shares to an infant, both the transferor and the directors of the company being ignorant of the fact that the transferee was not of age. Some months later, and before the transferee had attained his majority, a winding-up order was made—*Held*, that it was the duty of the transferor to see that his transferee was a competent person, and therefore his name should be put in the list of contributories in place of that of the infant. *In re Joint Stock Discount Co. (Mann's Case)*, (1867), L. R., 3 Ch. 459. And see *In re China Steamship & Labuan Coal Co. (Capper's Case)*, (1868), L. R., 3 Ch. 458. And *In re Imperial Mercantile Credit Association (Richardson's Case)*, (1875), L. R., 19 Eq. 588.

But where an infant transferee came of age five months before the making of a winding-up order, and during that interval dealt with some of the shares in his name, it was held that as to the remaining shares, transferred to him on a separate occasion and by a person ignorant of his infancy, and in regard to which shares he did not raise the defence of infancy until four months after he had been placed upon the list of contributories, he must be held to have confirmed the transfer after he came of age; for a transfer of shares to an infant is only a voidable and not a void transaction. *In re Blakely Ordinance Co. (Lumsden's Case)*, (1868), L. R., 4 Ch. 31.

Where an infant transferee comes of age two years before the making of a winding-up order, and during that interval he makes no repudiation of his liability even though proceedings have been taken to enforce payment of calls, he is rightly made a contributory. *In re Norwegian Charcoal Iron Co. (Mitchell's Case)*, L. R., 9 Eq. 363. And see *In re Constantinople & Alexandria Hotel Co. (Ebbett's Case)*, (1870), L. R., 5 Ch. 302.

But where both the transferor and the company are unaware that the transferee is an infant, and that fact is discovered by the company some years before winding-up proceedings are commenced, the neglect of the company to specifically notify the transferor that his transferee is an infant will debar the liquidator from having the name of the transferor substituted for that of the transferee on the list of contributories, even though the latter is still an infant. *In re European Central Railway Co. (Parson's Case)*, (1869), L. R., 8 Eq. 656.

An infant, whose name has been signed in the stock subscription book by her father, and who has endorsed the dividend cheques at his request, not receiving any of the proceeds herself, should not be placed upon the list of contributories when the company goes into liquidation before she comes of age. And, if her name has been placed on the list, the fact that she does not appear to have it removed as soon as she comes of age will not affect her right, but will only result in the loss of costs. *Re The Central Bank & Hogg* (1890), 19 O. R. 7.

In *re Central Bank of Canada (Baines' Case)*, (1889), 16 Ont. A. R. 237.

Osler, J. A. (with whose judgment Burton, J. A. concurred) based his decision that the appellant was liable as a contributory on the ground that since there was an actually signed subscription contract, an actual receipt from the bank from the subscriber of a payment on account of a number of shares corresponding with that mentioned in the contract, and a subsequent receipt by the subscriber of dividends on the same number, it should be presumed that there was an acknowledgment of the subscription contract at a time within which a payment could effectually be made, and that under these circumstances both the subscriber and the bank were respectively stopped as against each other from denying the acknowledgment of the subscription, and the fact that the subscriber had been a holder of stock. And see *re Central Bank of Canada (Nasmith's Case)*, (1888), 16 O. R. 293; affirmed, 18 Ont. A. R. 209 (1890), where the points involved were mainly the same as in the preceding case.

H., for some time before the suspension of the Central Bank, in pursuance of an agreement with the cashier, bought in his own name, but really for the bank, shares of the bank, the object being to keep up the price of the stock. H. contended that he should not be placed upon the list of contributories, on the ground that the transfer of the shares to him was a fraudulent transaction, since the bank was really trafficking in its own shares. (R. S. C., c. 130, s. 45)—*Held*, that this was no defence as against the liquidators, who represented the creditors as well as the bank, and that H. was properly put upon the list of contributories. *Re The Central Bank of Canada (J. H. Henderson's Case)*, (1889), 17 O. R. 110. And see *Oakes v. Turquand* (1867), L. R., 2 H. L. C. 325; *Cree v. Somervail* (1879), 4 App. Cas. 648.

Fraudulent Preference (see also, sec. 95 *infra*.)

The directors of a company having power to receive payment of calls in advance paid into the bank the amounts remaining uncalled on their shares, and on the same day appropriated the money in payment of their directors' fees, for which they knew there were at the time no assets of the company available—*Held*, that it was not a *bona fide* payment on account of calls, that the directors had been derelict in their duty in having regard for their own interests solely instead of those of the company generally, and that they were still liable upon their shares. *In re European Central Ry. Co. (Syke's Case)*, (1872), L. R., 13 Eq. 255.

[Sec. 25, c. 131, 30 and 31 Vic. (Imperial). (1867), makes provision for issue of paid-up shares,—written contract making them so to be filed at or before issue with Registrar of Joint Stock Companies. No such power under our Acts.]

But where directors who, not having been called on to pay anything on their shares, made themselves personally liable for

money advanced to the company by a bank, and, the bank having recovered judgment against them as guarantors, they, in pursuance of a resolution of the board, paid the amount of their shares in advance in order to reduce the indebtedness of the company to the bank, it was held (a winding-up order having been granted on a petition presented two days after this transaction), that the directors who had so acted had been guilty of no breach of duty to the company in thus relieving themselves of their personal liability to the bank; and that the payment was a valid one on account of their shares, which should therefore be considered paid up. *In re Wincham Ship-Building, Boiler & Salt Co. (Poole, Jackson and Whyte's Case)*, (1878), L. R., 9 C. D. 322.

A holder of fully paid-up shares is not a contributory within the meaning of the Act. *In re British & Foreign Cork Co. (Leifchild's Case)*, (1865), L. R., 1 Eq. 231.

And in another English case it was held even a holder of fully paid-up shares who is indebted to the company cannot be placed upon the list of contributories. *In re Marlborough Club Co.* (1868), L. R., 5 Eq. 365.

As to when a cancellation of shares is or is not a valid compromise, see the observations of Hall V. C. in *In re Esparto Trading Co.* (1879), 12 C. D. 19. And also see *Adam's Case* (1872), L. R., 13 Eq. 474, and *Hall's Case* (1870), L. R., 5 Ch. 707.

"No cancellation can effect past liability." *Marshall v. Glamorgan Iron & Coal Co.* (1868), L. R., 7 Eq. at p. 138.

Therefore, when a company is in point of fact insolvent, no such cancellation of shares can come under the head of a valid compromise on the part of the company.

The majority of the following decisions, regarding the liability of a shareholder as a contributory, were decided under the provisions of the Ontario Winding-Up Act.

C. and others signed a stock subscription book headed as follows: "We, whose names are hereunto subscribed, agree to become stockholders in the E. C. R. Company of Toronto, and to take the number of shares set opposite to our respective names, and we severally bind ourselves to make payments thereon, and to (do) all other matters and things in relation to the same as may be required by the Board of Directors of the said company." The company incurred debts, but never went into operation; and no stock was ever allotted to the subscribers therefor—*Held*, that C. and the others in like position were properly placed upon the list of contributories. Boyd, C., based his judgment on the fact that the Ontario Joint Stock Letters Patent Act, R. S. O. (1877), cap. 150, contemplated two modes of acquiring stock, namely (1) by subscription and (2) by allotment. *In re The Queen City Refining Co. of Toronto, Ltd.* (1885), 10 O. R. 264.

Compare this with the decision of the Court of Appeal in *In re Standard Fire Insurance Co. (Kelly's Case)*, (1885), 12 Ont. A. R. 486. According to the report of the above decision, counsel for the liquidator cited *Kelly's Case*, as decided by Ferguson, J. (7 O. R. 204), as an authority for their contention. This argument was in October, 1885; and in the previous April the Court of Appeal had reversed the judgment of Ferguson, J.

In *In re London Speaker Printing Co., etc.* (1888), 16 Ont. A. R., 508. Burton, J. A. (p. 513) said in reference to the *Queen City Refining Co.* case *supra*, that the judge there must have been under the impression that the subscription for the stock was made after the issue of the Letters Patent.

After the incorporation of a company by Ont. Letters Patent, C. signed a share subscription book, the heading of which ended as follows: "and we request the number of shares for which we have subscribed hereunder to be allotted to us." No shares were allotted to C.; he was not entered on the books of the company as a shareholder, and he never made any payments. Some years later a winding-up order was granted—*Held* (reversing the order of Boyd C.), that the signing of the agreement by C. did not, standing as it did above, and without any recognition of C. as a shareholder by the company, make C. liable as a contributory. *In re The Zoological & Acclimatization Society of Ontario (Cox's Case)*, (1889), 16 Ont. A. R. 543. See also, *Selma & Tennessee Railway Co. v. Tipton*, 5 Ala. 787, cited with approval by Osler, J. A. (16 Ont. A. R. 551), as appearing "to be a very well considered case."

In a New Brunswick case, Ritchie, C. J., drew a distinction between cases where application for stock was made by intending subscribers, there being then only a unilateral contract until the company expressed its acceptance, and cases where the company sent its agents to offer shares, a binding contract then arising on the acceptance of the offer. *European, etc., Railway Co. v. Macleod* (1875), 3 Pugsley 3.

P. and B. signed instruments purporting to be a subscription for shares or an agreement to accept shares in companies not at the time incorporated. They were not named as incorporators in the Letters Patent, nor were any shares ever allotted to them, but they were entered in the books as shareholders, and notices of meetings and demands for payment of calls were sent them—*Held*, that there was no company in existence when the instruments were signed and therefore they were not such binding contracts to take shares as to make P. and B. liable as contributories. *In re The London Speaker Printing Co. (Pearce's Case)*; *in re The Speight Mnf. Co. (Boulton's Case)*, (1889), 16 Ont. A. R. 508.

D., signed a prospectus of a proposed company for a certain number of shares, it being stated therein that the capital stock was to be \$75,000. Without D's knowledge or acquiescence the company was incorporated with a capital of \$150,000. Before the incorporation, D. paid half the amount of his shares, but no stock was allotted to him, no entry of his name was made in any stock book, and he never acted as a shareholder—*Held*, that the change in the capital of the company made a material variance between the prospectus and the charter, and that as there had been no acquiescence or laches on D's part, he was not liable as a contributory. *Stevens v. The London Steel Works Co. (Delano's Case)*, (1887), 15 O. R. 75. See also *Pitchford v. Davis* (1839), 5 M. & W. 2.

L. at the request of the president of an investment association accepted from him a transfer of shares, partly paid up, for the purpose of attending a shareholders' meeting and forming a *quorum*, and gave the president a power of attorney to retransfer the shares after the meeting. No retransfer was ever made, though L. was ignorant of the fact—*Held*, that he was liable as a contributory. The principle of this decision is that, L. having once become a shareholder, it rested on him to show that he had divested himself of his liability. *The Ont. Investment Association v. Leys* (1893), 23 O. R. 496.

"If we find that he was originally on the list by his own authority, and that he never took any adequate steps in point of law for the removal of his name from the list, the consequence is inevitable, that, having begun to be, he continues to be..... a person proper to be placed upon the list of contributories." Per

Lord Hatherly in *City of Glasgow Bank (Bell's Case)* (1879), 4 App. Cas. 563.

"The law undoubtedly is, that a person who is once a shareholder must remain a shareholder until he can show that he has in some lawful way got rid of his liability." Per Gifford, L. J., in *In re Patent Paper Manfg. Co. (Addison's Case)*, (1870), L. R., 5 Ch. 297. And see also, *In re The International Contract Co. (Langer's Case)*, (1868), 37 L. J. Ch. 292. *In re General Provident Association Co. (Bridger's Case)*, (1869), L. R., 9 Eq. 74, 79. *Spackman v. Evans* (1868), L. R., 3 H. L. at p. 238; *Adderly v. Storm* (1844), 6 Hill (N. Y.) 624.

Directors subscribed for stock on the issue of letters patent, making no provision for the payment or the making of calls, although applications for stock by others was accepted only on the applicants paying 25 per cent. on subscription and 25 per cent. on allotment. Subsequently the directors, knowing of the insolvent condition of the company transferred the shares to persons of no substance. Held, that the transfers were invalid, also that the directors were liable for breach of trust, and that they should be placed on the list of contributories. *Re Peterborough Cold Storage Co.*, 1907, 14 O. L. R., 475.

The secretary treasurer of a company was liable for \$275 upon shares held by him. He entered in the company's cash book to his credit \$275 for services rendered. In fact the company owed him \$271.06, moneys properly disbursed for the company. The secretary-treasurer acted in good faith. Held, that the disbursements made by him constituted a good payment upon his shares. *Re Ottawa Cement Block Co.*, 1907, 14 O. L. R., 389.

A bank dealt with its shares by way of marginal transfer, the first transfer being made in blank, subject, as set out by marginal note, to the order of a broker. The ultimate purchaser signed an acceptance in the book, immediately under the transfer so signed in blank by the seller, the intermediate dealings by the broker not appearing in the bank books, and the transferees being entered as stockholders in the stock ledger of the bank—Held, that this amounted to an acceptance of the shares in blank, and that the holder at the time of the suspension should be placed upon the list of contributories. And this would be so even if one of the intermediate transferees did not sign the acceptance when he dealt with the shares by selling and transferring them. (See sec. 96, Bank Act.). *Re Central Bank of Canada (Baines' Case)*, (1888), 16 O. R. 293, and (1889), 16 Ont. A. R. 237. And *re Central Bank of Canada (Nasmith's Case)*, (1888), 16 O. R. 293. and (1890), 18 Ont. A. R. 209.

B. subscribed for 25 shares of the capital stock of a bank, but did not at the time of the subscription, or within 30 days thereafter, make any payment thereon, as required by the Bank Act. Some months later, however, B. paid to the bank 20 per cent. of the amount subscribed, and this was accepted by the bank, and subsequently dividend cheques were issued to him, which he endorsed and which were paid. B. afterwards, and before the suspension of the bank, transferred his shares—Held, that the transferees were liable as contributories upon the insolvency of the bank. *Re Central Bank of Canada (Baines' Case)* (1888), 16 O. R. 293.

Upon appeal this decision was confirmed, but the reasons advanced by the judges of the Court of Appeal for arriving at this decision were somewhat different. Hagarty, C. J. O., held that when B. did make the 20 per cent. payment it could be treated as

a new subscription, whether he again wrote his name in the subscription book or not. Maclellan, J. A., was of the opinion that as 10 per cent. had not been paid within the time prescribed, the original subscription was void, but that the subsequent payment by B. accepted by the bank, and the endorsement by B. of the dividend cheques, operated as a new subscription. See 16 Ont. A. R. 237.

52. Liability after Transfer of Shares.—If a shareholder has transferred his shares under circumstances which do not, by law, free him from liability in respect thereof, or if he is by law liable to the company or its members or creditors, as the case may be, to an amount beyond the amount unpaid on his shares, he shall be deemed a member of the company for the purposes of this Act, and shall be liable to contribute, as aforesaid, to the extent of his liabilities to the company or its members or creditors, independently of this Act.

2. An Asset.—The amount which he is so liable to contribute shall be deemed an asset and a debt as aforesaid. R. S., c. 129, s. 45.

A person who acquires shares within sixty days before the suspension of a bank should be placed upon the list of contributories; and so also should the persons who have transferred the shares to him. *Re The Central Bank of Canada (J. D. Henderson's Case)*, (1889), 17 O. R. 410, Baines' Case, 1889, 16 A. R., 237. And see the Bank Act, sec. 130, which enacts that any person who has held shares within 60 days before the suspension of the bank shall be liable for all calls on such shares in the same manner as if they had held them at the date of the suspension. But this does not affect any recourse they may have against the actual holders.

53. Liability of Contributory a Debt.—The liability of any person to contribute to the assets of a company under this Act, in the event of the business of the same being wound up, shall create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made, as hereinafter mentioned, for enforcing such liability. R. S., c. 129, s. 46.

54. Provable Against His Estate.—In the case of the bankruptcy or insolvency of any contributory, the estimated value of his liability to future calls, as well as calls already made, may be proved against his estate. R. S., c. 129, s. 46.

The power to prove "in the case of the bankruptcy or insolvency of a contributory the estimated value of his liability to future calls" only applies where the bankruptcy of the contributory is contemporaneous with the winding up of the company. *Martin's Patent Anchor Co. v. Morton*; *Martin's Patent Anchor Co. v. Hewett*, (1868), L. R., 3 Q. B. 306.

55. Contributory may be ordered to hand over money and books.—The court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories as trustee, receiver, banker, agent or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within such time as the court directs, to or into the hands of the liquidator, any sum or balance, books, papers, estate or effects which are in his hands for the time being, and to which the company is *prima facie* entitled. R. S., c. 129, s. 47.

A creditor of the company who obtains a garnishee order

attaching moneys of the company in the hands of its bankers, and who subsequently and after the presentation of a petition for winding up, but, before the order is made, obtains an order for and receives payment of the moneys, is not a trustee within the meaning of the section, and the court has no power to compel him to refund to the liquidator the money so obtained. *In re United English & Scottish Assurance Co., ex parte Hawkins*, L. R., 5 Eq. 300, and (1868), L. R., 3 Ch. 787.

56. Court may Order Payment by Contributory.—The court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made in manner in the said order mentioned, of any moneys due from him or from the estate of the person whom he represents, to the company, exclusive of any moneys which he or the estate of the person whom he represents is liable to contribute by virtue of any call made in pursuance of this Act. R. S., c. 129, s. 48.

57. When Calls may be Made on Contributories.—The court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves. R. S., c. 129, s. 49.

58. Consideration of Possible Failure to Pay—Proviso as to maturity of Debt.—The court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same: Provided, that no call shall compel payment of a debt before the maturity thereof, and that the extent of the liability of any contributory shall not be increased by anything in this section contained. R. S., c. 129, s. 49.

59. Payment by Contributory into Bank.—The court may order any contributory, purchaser or other person from whom money is due to the company, to pay the same into some chartered bank or post office savings bank or other bank or Government savings bank, to the account of the court, instead of the liquidator.

2. Enforcement of Order.—Such order may be enforced in the same manner as if it had directed payment to the liquidator. R. S., c. 129, s. 50.

60. Rights of Contributories.—The court shall adjust the rights of the contributories among themselves. R. S., c. 129, s. 51.

MEETINGS OF CREDITORS.

61. Meetings of Creditors for Ascertaining their Wishes.—The court may if it thinks it expedient, direct meetings of the creditors, contributories, shareholders or members to be summoned, held and conducted in such manner as the court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meetings to the court. R. S., c. 129, s. 19.

62. Votes according to amount of Claim.—In such case regard shall as to creditors be had to the amount of the debt due to each creditor and as to shareholders or members, to the number of votes conferred on each shareholder or member by law or by the regulations of the company;

2. Preliminary Proof.—The court may prescribe the mode of preliminary proof of creditor claims for the purpose of the meeting. R.S., c. 129, s. 19.

63. Court may Summon Meeting of Creditors to Consider any Proposed Compromise.—Where any compromise or arrangement is proposed between a company in course of being wound up under this Act and the creditors of the company, or by and between any such creditors or any class or classes of such creditors and the company, the court, in addition to any of its powers, may on the application in a summary way of any creditor or of the liquidator, order that a meeting of such creditors or class or classes of creditors shall be summoned in such manner as the court shall direct. 62-63 V., c. 43, s. 3.

64. Sanction of Compromise.—If a majority in number representing three-fourths in value of such creditors or class or classes of creditors present, either in person or by proxy, at such meeting, agree to any arrangement or compromise, such arrangement or compromise, may be sanctioned by an order of the court and in such case shall be binding on all such creditors, or on such class or classes of creditors as the case may be, and also on the liquidator and contributories of the company. 62-63 V., c. 43, s. 3.

The court has no power under the statute to enforce a compromise upon a dissentient minority, nor can a liquidator be compelled to consent to a compromise. *Re Sun Lithographing Co.* (1892), 24 O. R. 200. *In re Albert Life Assurance Co.* (1871), L. R. 6 Ch. 381. And a compromise recommended by a liquidator may be rejected by a dissentient minority. "The only power is in the liquidator with the sanction of the court, and there is no power in the court to order a compromise, whether the liquidator recommends it or not." Per James, L. J., in *In re East of England Banking Co. (Pearson's Case)* (1872). L. R., 7 Ch. 309, p. 311. But see the Companies' Act of 1870, 33 and 34 Vic., c. 104, whereby a statutory majority of creditors is enabled to bind a minority. There is no similar enactment in Canada.

65. Chairman at Meeting.—In directing meetings of creditors, contributories, shareholders or members of the company to be held as provided in this Act, the court may either appoint a person to act as chairman of such meeting, or direct that a chairman be appointed by the persons entitled to be present at such meeting; and in case the appointed chairman fails to attend the said meeting, the persons present at the meeting may elect a chairman qualified, who shall perform the duties prescribed by this Act. 52 V., c. 32, s. 13.

66. Voting to be in Person or by Proxy.—No contributory, creditor, shareholder, or member shall vote at any meeting unless present personally or represented by some person acting under a written authority, filed with the chairman or liquidator, to act as such representative at the meeting or generally. R.S., c. 129, s. 55.

PRODUCTION OF PASS-BOOKS.

67. Bank Book of Liquidator to be Produced at Meeting.—At every meeting of the contributories, creditors, shareholders or

members, the liquidator shall produce a bank pass book, showing the amount of the deposits made for the company, the dates at which such deposits were made, the amount withdrawn and dates of such withdrawal. R.S., c. 129, s. 37.

68. And on Order of Court.—The liquidator shall also produce such passbook whenever ordered so to do by the court. R. S. c. 129, s. 38.

CREDITOR'S CLAIMS.

69. What Debts may be Proved against company.—When the business of a company is being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent and for liquidated or unliquidated damages, shall be admissible to proof against the company.

2. Uncertain claims valued.—In case of any claim subject to any contingency or for unliquidated damages or which for any other reason does not bear a certain value, the court shall determine the value of the same and the amount for which it shall rank. R.S., c. 129, s. 56.

Shareholders in a loan company, in answer to a proposal from the company, paid towards the reserve fund dividend paid to them by the company and various other sums of money, with a view to increase the reserve fund to the same amount as the paid-up stock. In winding-up proceeding, Held, that such shareholders were not entitled to rank as creditors upon the assets of the company with the other creditors, depositors and debenture holders, and that any claim they had against the company and its reserve fund was subject to the payment of the debts of the company. *Re Atlas Loan Co.*, claims on Reserve Fund, 1905, 9 O. L. R. 468.

70. Claims of Clerks and Employees Privileged.—Clerks or other persons in or having been in the employment of the company in or about its business or trade, shall be collocated in the dividend sheet by special privilege over other creditors, for any arrears of salary or wages due and unpaid to them at the time of the making of the winding-up order, not exceeding the arrears which have accrued to them during the three months next previous to the date of such order. R. S., c. 129, s. 56.

This section does not in any way interfere with the *lex loci contractus* being followed in the case of a claim. A lease of property, situated in Quebec, was made in that province, and provided that the same should be void at the option of the lessor on the insolvency of the lessee. By the law of the Province of Quebec upon such insolvency rent not yet exigible by the terms of the lease thereby becomes so. (C. C., Art. 1092; and *Menard v. Pelletier*, 7 L. N. 15. The lessee became insolvent, and a claim for the whole rent of the unexpired term was allowed. *In re Harte & The Ontario Express & Transportation Co.* (1892), 22 O. R. 510. And see, *in re Gartness Iron Co.*, *ex parte* Lord Elphinstone, L. R. (1870), 10 Eq. 412.

An English decision, *in re English Joint Stock Bank (Yelland's Case)*, (1867), L. R., 4 Eq. 350, deals with the principle upon which the amount of salary and compensation payable to a manager of a company upon the sudden termination of his engagement should be calculated.

71 Law of Set-Off to Apply.—The law of set-off, as admin-

istered by the courts, whether of law or equity, shall apply to all claims upon the estate of the company, and to all proceedings for the recovery of debts due or accruing due to the company at the commencement of the winding up, in the same manner and to the same extent as if the business of the company was not being wound up under this Act. R. S., c. 129, s. 57.

On the day before a bank suspended payment, a depositor therein gave his cheque drawn thereon to C., who deposited it in another bank for collection, and obtained an advance on it. After suspension the cheque was marked good by the bank, debited to the account of the depositor and credited to that of the second bank. Subsequently, the liquidators of the insolvent bank claimed to set off against the cheque subsequently accruing liabilities of the depositor—*Held*, that there was no right of set-off. *Re Central Bank (Cayley's Case)*, (1889), 17 O. R. 122—*Held*, also, that the case did not come within any of the clauses of the Winding-Up Act relating to fraudulent preferences.

When contributories upon the insolvency of a bank are required to pay their double liability under sec. 89 of the Bank Act, they cannot set off the amounts to their credit in the books of the bank, but are only entitled to be placed as creditors on the dividend sheet in respect of such claims. *The Liquidators of the Maritime Bank v. Troop* (1889), 16 S. C. R. 456. And a shareholder in a limited company who is also a creditor on a contract cannot set off the debt due to him, or the dividends which may accrue to him, against calls. But upon payment of all calls due he will rank for dividends like the other creditors. *In re Overend, Gurney & Co. (Grissell's Case)*, (1866), L. R., 1 Ch. 528.

Winding-up proceedings were commenced in December, 1866, and about four months later a shareholder assigned five debentures of the company, notice of the assignment being duly given to the liquidator. In June, 1867, and February, 1868, calls were made on the assignor to an amount in excess of that which was due on the debentures. The calls were not paid, and it was *held* that, on that account, the assignee was not entitled to prove against the company on the debentures. *In re China Steamship Co., ex parte Mackenzie* (1869), L. R., 7 Eq. 240.

As to the necessity for mutuality in order that a claim of a creditor of the company should be set off against a claim of the liquidator, see *Re Warton Beet Sugar Mfg. Co., McNeill's Case*, 1905, 10 O. L. R., 219.

72. Time for Sending in Claims.—The court may fix a certain day or certain days on or within which creditors of the company may send in their claims and may direct notice thereof to be given by the liquidator, and determine the manner in which notice of the day or days so fixed shall be given by the liquidator to the creditors. R. S., c. 129, s. 59.

73. Creditors required to prove Claims.—The liquidator may give notice in writing to creditors who have sent in their claims to him, or of whose claims he has notice, and whose claims he considers should not be allowed without proof, requiring such creditors to attend before the court on a day to be named in such notice, and prove their claims to the satisfaction of the court.

2. Disallowance on Default.—In case any creditor does not attend in pursuance of such notice his claim shall be disallowed, unless the court sees fit to grant further time for the proof thereof;

3. Disallowance on Hearing.—If any creditor attends in pursuance of such notice, the court may on hearing the matter allow

or disallow the claim of such creditor in whole or in part. 52 V., c. 32, s. 14, 55-56 V., c. 28, s. 1.

74. Distribution of Assets.—After the notices required by the two last preceding sections have been given, and the respective times therein specified have expired, and all claims of which proof has been required by due notice in writing by the liquidator in that behalf have been allowed or disallowed by the court in whole or in part, the liquidator may distribute the assets of the company or any part thereof among the persons entitled thereto and without reference to any claim against the company which shall not have then been sent to the liquidator.

2. As to claims not sent in.—The liquidator shall not be liable to any person whose claim shall not have been sent in at the time of distributing such assets, or part thereof for the assets or part thereof so distributed. R.S., c. 129, s. 60.

The allowance of a claim put in after the time fixed by the court is *ex debite justitie*, and not discretionary. Per Robertson, J., *re Central Bank of Canada (Cayley's Case)*, (1889), 17 O. R. 122.

75. Rank of Claims Sent in After the Distribution has been Commenced.—In case any claim or claims shall be sent in to the liquidator after any partial distribution of the assets of the company, such claim or claims, subject to proof and allowance as required by this Act, shall rank with other claims of creditors in any future distributions of assets of the company. R. S., c. 129, s. 60.

SECURED CLAIMS.

76. Duty of Creditor Holding Security.—If a creditor holds security upon the estate of the company, he shall specify the nature and amount of such security in his claim, and shall therein, on his oath, put a specified value thereon. R.S., c. 129, s. 62.

77. Option of Liquidator as to Security.—The liquidator, under the authority of the court, may either consent to the retention by the creditor of the property and effects constituting such security or on which it attaches, at such specified value, or he may require from such creditor an assignment and delivery of such security, property and effects, at such specified value, to be paid by him out of the estate so soon as he has realized such security, together with interest on such value from the date of filing the claim till payment. R. S., c. 129, s. 62.

78. Ranking of Secured Creditor.—In case of such retention the difference between the value at which the security is retained and the amount of the claim of such creditor shall be the amount for which he may rank as aforesaid. R. S., c. 129, s. 62.

79. Security by Negotiable Instrument.—If a creditor holds a claim based upon negotiable instruments upon which the company is only indirectly or secondarily liable, and which is not mature or exigible, such creditor shall be considered to hold security within the meaning of the three last preceding sections and shall put a value on the liability of the person primarily liable thereon as being his security for the payment thereof;

2. Revaluation.—After the maturity of such liability and its non-payment, he shall be entitled to amend and revalue his claim. R.S., c. 129, s. 62.

Where a creditor who holds acceptances of the company for

the amount of his debt, and also debentures as collateral security, he can only prove for the amount really due him, and not for the amount which is secured by the debentures. *In re Blakely Ordinance Co. (Metropolitan & Provincial Bank's Claim)*, (1869), L. R., 8 Eq. 244.

80. Security by Mortgage or Real Property or a Ship.—

If the security consists of a mortgage upon ships or shipping, or upon real property, or of a registered judgment or an execution binding real property which is not by some other provision of this Act invalid for any purpose of creating a lien, claim or privilege upon the real or personal property of the company, the property mortgaged or bound by such security shall only be assigned and delivered to the creditor.

(a.) **Assignment with Defective Title.**—Subject to all previous mortgages, judgments, executions, hypothecs and liens thereon, holding rank and priority before his claim, and

(b.) **Under Obligation.**—Upon his assuming and binding himself to pay all such previous mortgages, judgments, executions, hypothecs and liens, and

(c.) **Subject to Indemnity.**—Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such previous mortgages, judgments, executions, hypothecs and liens. R. S., c. 129, s. 63.

81. In Case of Subsequent Claims by.—If there are mortgages, judgments, executions, hypothecs or liens upon such ships or shipping or real property subsequent to those of such creditor, he shall only obtain the property.

(a.) **Consent.**—By consent of the subsequently secured creditors, or

(b.) **Claims filed.**—Upon their filing their claims specifying their security thereon as of no value, or

(c.) **Value Paid.**—Upon his paying the value by them placed thereon, or

(d.) **Company Indemnified.**—Upon his securing the estate of the company to the satisfaction of the liquidator against any claim by reason of such subsequent mortgages, judgments, executions, hypothecs and liens. R. S., c. 129, s. 63.

A secured creditor has a right to apply for and obtain leave to bring an action to enforce his security. It is not optional for a secured creditor to either prove his claim in a winding-up or else proceed with an action to enforce it; and if he does commence an action it is still compulsory on him to proceed before the liquidator under secs. 81 *et seq.* of the Winding-up Act. *In Re Lenora*, 9 B. C. R., 471.

82. Authority to Retain Necessary.—Upon a secured claim being filed, with a valuation of the security, the liquidator shall procure the authority of the court to consent to the retention of the security by the creditor, or shall require from him an assignment and delivery thereof. R. S., c. 129, s. 64.

DIVIDEND SHEET.

83. Must Provide for privileged and secured Claims.—In the preparation of the dividend sheet, due regard shall be had to the rank and privilege of every creditor, but no dividend shall be

allotted or paid to any creditor holding security upon the estate of the company for his claim until the amount for which he may rank as a creditor upon the estate, as to dividends therefrom is established, as herein provided. R.S., c. 129, s. 65.

LIENS.

84. No lien by execution, etc., after commencement of winding up.—No lien or privilege shall be created—

(a) Upon the real or personal property of the company, for the amount of any judgment debt, or of the interest thereon, by the issue or delivery to the sheriff of any writ of execution, or by levying upon or seizing under such writ the effects or estate of the company;

(b) Upon the real or personal property of the company, or upon any debts due or accruing or becoming due to the company, by the filing or registering of any memorial or minute of judgment, or by the issue or taking out of any attachment or garnishee order or other process or proceeding;—
if, before the payment over to the plaintiff of the moneys actually levied, paid or received under such writ, memorial, minute, attachment, garnishee order or other process or proceeding, the winding up of the business of the company has commenced: Provided that this section shall not affect any lien or privilege for costs which the plaintiff possesses under the law of the province in which such writ, attachment, garnishee order or other process or proceeding was issued or taken out." 8 Edw. VII., c. 75, s. 1.

CONTESTATION OF CLAIMS.

85. Claim or Dividend may be Objected to.—Any liquidator, creditor or contributory or shareholder or member may object to any claim filed with the liquidator, or to any dividend declared. R. S., c. 129, s. 67, 52 V., c. '32, s. 15.

86. Objections to be Filed in Writing.—If a claim or dividend is objected to, the objections shall be filed in writing with the liquidator, together with the evidence of the previous service of a copy thereof on the claimant;

2. ANSWERS AND REPLIES.—The claimant shall have six days to answer the objections, or such further time as the court allows, and the contestant shall have three days to reply, or such further time as the court allows. R. S., c. 129, s. 67.

87. Day to be Fixed for Hearing.—Upon the completion of the issues upon the objections, the liquidator shall transmit to the court all necessary papers relating to the contestation, and the court shall then, on the application of either party, fix a day for taking evidence upon the contestation, and hearing and determining the same. R. S., c. 129, s. 67.

88. Costs.—The court may make such order as seems proper in respect to the payment of the costs of the contestation by either party, or out of the estate of the company. R. S., c. 129, s. 67.

89. Default in Answer by Plaintiff.—If, after a claim or dividend has been duly objected to, the claimant does not answer the objections, the court may, on the application of the contestant, make an order barring the claim or correcting the dividend, or may make such other order in reference thereto as appears right. R. S., c. 129, s. 67.

90. Security for Costs.—The court may order the person objecting to a claim or dividend to give security for the costs of the contestation within a limited time, and may, in default, dismiss the contestation or stay proceedings thereon, upon such terms as the court thinks just. R.S., c. 129, s. 67.

DISTRIBUTION OF ASSETS.

91. Distribution of Property of Company.—The property of the company shall be applied in satisfaction of its debts and liabilities and the charges, costs and expenses incurred in winding-up its affairs. R. S., c. 129, s. 58.

92. Winding-up expenses Payable out of Estate.—All costs, charges, and expenses properly incurred in the winding up of a company, including the remuneration of the liquidator, shall be payable out of the assets of the company, in priority to all other claims. R. S., c. 129, s. 91.

93. Distribution of surplus of Property of Company.—The court shall distribute among the persons entitled thereto, any surplus that remains after the satisfaction of the debts and liabilities of the company, and the winding up charges, costs and expenses, and unless it is otherwise provided by law or by the Act, charter or instrument of incorporation, any property or assets remaining after such satisfaction shall be distributed among the members or shareholders, according to their rights and interests in the company. R. S., c. 129, ss. 51 and 58.

It was agreed that those shareholders who contributed all the capital should be repaid the same with interest before the other shareholders, who had received paid-up shares for certain patents and premises, should participate in the profits. A winding-up order was granted before any profits were made—*Held*, that as there was only a provision for a preferential dividend, and as there was no arrangement for the division of the capital on the dissolution of the company, the surplus assets should be distributed between both classes of shareholders *pro rata*, without regard to their right respecting dividends. *In re London India Rubber Co.*, (1868). L. R., 5 Eq. 519. As to distribution of surplus, see also *In re Bangor & Portmadoc Slate & Slab Co.* (1875), L. R., 20 Eq. 59. *In re Bridgewater Navigation Co.* (1888), L. R., 39 C. D. 1; (1889), L. R., 14 App. Cas. 525.

FRAUDULENT PREFERENCES.

94. Gratuitous Contracts Presumed to be with Intent to defraud Creditors.—All gratuitous contracts or conveyances or contracts without consideration, or with a merely nominal consideration, respecting either real or personal property, made by a company in respect to which a winding-up order under this Act is afterwards made, with or to any person whatsoever (whether a creditor of the company or not), within three months next preceding the commencement of the winding up or at any time afterwards shall be presumed to have been made with intent to defraud the creditors of such company. R. S., c. 129, s. 68.

95. Contracts Injuring or Obstructing Creditors Presumed to be with Like Intent.—All contracts by which creditors are injured, obstructed or delayed, made by a company unable to meet its

engagements and in respect to which a winding-up order under this Act is afterwards made, with a person whether a creditor of the company or not, who knows such inability or has probable cause for believing such inability to exist, or after such inability is public and notorious shall be presumed to be made with intent to defraud creditors of such company. R.S., c. 129, s. 68.

A security given by an insolvent company in payment of a debt due to a director who is aware of the state of the company can be recovered at the instance of the liquidator, even though the director was pressing for payment. The director should resign his office before demanding payment from a company so situated. *Gas-light Improvement Co. v. Terrell* (1870), L. R., 10 Eq. 168. In that case it was held that the bill to set aside the security might be filed in the name of the company as plaintiff. (*Ib.*) See also decisions cited under sub-title "Fraudulent Preferences" in notes to sec. 5, *supra*.

96. Contracts with Consideration Voidable When.—

A contract or conveyance for consideration, respecting either real or personal property, by which creditors are injured or obstructed, made by a company unable to meet its engagements with a person ignorant of such inability, whether a creditor of the company or not, and before such inability has become public and notorious, but within thirty days next before the commencement of the winding up of the business of such company under this Act, or at any time afterwards, is voidable, and may be set aside by any court of competent jurisdiction, upon such terms as to the protection of such person from actual loss or liability by reason of such contract, as the court orders. R. S., c. 129, s. 69.

97. Contracts made with intent to Defraud or Delay Creditors Void.—All contracts or conveyances made and acts done by a company, respecting either real or personal property, with intent fraudulently to impede, obstruct or delay the creditors of the company in their remedies against the company or with intent to defraud the creditors of the company or any of them,—and so made, done and intended with the knowledge of the person contracting or acting with the company, whether a creditor of the company or not,—and which have the effect of impeding, obstructing or delaying the creditors in their remedies or of injuring them, or any of them, shall be null and void. R. S., c. 129, s. 70.

98. Sale or Transfer in Contemplation of Insolvency.—If any sale, deposit, pledge or transfer is made of any property, real or personal, by a company in contemplation of insolvency under this Act, by way of security for payment to any creditor,—or if any property, real or personal, movable or immovable, goods, effects or valuable security, are given by way of payment by such company to any creditor, whereby such creditor obtains or will obtain an unjust preference over the other creditors, such sale, deposit, pledge, transfer or payment shall be null and void; and the subject thereof may be recovered back for the benefit of the estate by the liquidator, in any court of competent jurisdiction.

2. Presumption if within Thirty Days.—If such sale, deposit, pledge or transfer is made within thirty days next before the commencement of the winding up under this Act, or at any time afterwards, it shall be presumed to have been so made in contemplation of insolvency. R. S., c. 129, s. 71.

On 15th November, W. and McM. deposited in the Central Bank, for collection, a cheque, which was collected the same day. It subsequently appeared that on that date the bank was hopelessly insolvent; that on the previous day the directors had passed a resolution instructing the cashier to apply to other banks for assistance, and deciding to suspend payment if that was refused; that the other banks declined to assist and that the Central Bank did not open its doors on November 16—*Held*, that the depositors were entitled to be repaid the amount of their deposit as being obtained from them by fraud. The depositors were not in the position of creditors of the bank, and therefore it would not be a preferential payment. *Re The Central Bank of Canada (Well's and MacMurchy's Case)*, (1888), 15 O. R. 611.

A depositor may recover from the liquidators the money he deposited on the day the bank suspended payment. *Exchange Bank of Canada v. The Montreal Coffee House Association* (1886), 2 M. L. R. (S. C.) 141. See also *Craigie v. Hadley* (1885), 99 N. Y. (Ct. of Appeals) 131. (*Anonymous Case* 1876), 67 N. Y. (Ct. of Appeals), 598. *Dodge v. Mastin* (1883), 17 Federal Rep. 660.

99. Payments by Company Within Thirty Days.—Every payment made within thirty days next before the commencement of the winding up under this Act by a company unable to meet its engagements in full, to a person knowing such inability, or having probable cause for believing the same to exist, shall be void, and the amount paid may be recovered back by the liquidator by suit or action in any court of competent jurisdiction;

2. Restoration of Security.—If any valuable security is given up in consideration of such payment, such security or the value thereof shall be restored to the creditor upon the return of such payment. R. S., c. 129, s. 72.

A bank suspended payment on 15th September, 1883. Winding-up proceedings were commenced 22nd November, and the winding-up order made 5th December. S. was a depositor in the bank. At the time of the suspension R. & G. H. were indebted to the bank, which held certain hardware as security. Wishing to realize, the bank sold this hardware to A. H. & Co., and accepted S.'s cheques drawn on his deposit account as payment. A. H. & Co. gave their acceptances to S. and duly paid them. S., being indebted to A. H. & Co., gave them his cheque on the bank in part payment, which the bank accepted from them on 23rd October to retire an overdue bill. In an action by the liquidator to recover from S. under this section, it was held that he could not do so, the reason as regards the first transaction being that S. had received no valuable consideration from the bank which he should be ordered to repay. On 19th November, S. also sold his cheque on the bank for \$320 to his uncle, who was the local manager of the bank, and it was negotiated and accepted by the bank on 23rd November, after winding-up proceedings had been commenced—*Held*, that although it was probably an invalid transaction so far as the person who received the money was concerned, yet there was no payment to S. of anything within the meaning of this section. *The Exchange Bank of Canada v. Stinson* (1885), 8 O. R. 667.

C. & S., depositors, drew a cheque for \$4,000 on 1st November and gave it to D., who was a debtor of the bank on notes maturing in December and January. S. gave C. and S. mortgage security for the cheque on 31st October. The arrangement was made on 5th October. The cheque was only presented to the bank on 23rd November (the day after winding-up proceedings commenced).

when it was accepted in payment of the notes. The liquidators sought to recover the amount paid on the cheque as having been paid to C. and S. after the commencement of winding-up proceedings, and as being an unjust preference—*Held* that there was no payment by the bank to the defendants, and that, therefore, the case was not within the statute. Apart from the \$4,000, C. and S. had \$2,118.03 to their credit until 23rd November. One Green was being sued by the bank on overdue notes. C. and S. gave him their cheque for \$2,118 on 21st November, receiving in return mortgage security. The cheque was presented and the notes thereby retired on 23rd November—*Held*, that it was not a wrongful payment under the Act to C. and S. *The Exchange Bank of Canada v. Counsell, et al.* (1885), 8 O. R. 673.

100. Debts of Company Transferred to Contributories or Persons Indebted to the Company.—When a debt due or owing by the company has been transferred within the time and under the circumstances in the last preceding section mentioned, or at any time afterwards, to a contributory, or to any person indebted or liable in any way to the company, who knows or has probable cause for believing the company to be unable to meet its engagements, or in contemplation of its insolvency under this Act, for the purpose of enabling such contributory or such person indebted or liable to the company to set up, by way of compensation or set-off, the debt so transferred, such debt shall not be set up by way of compensation or set-off against the claim upon such contributory or person. R. S., c. 129, s. 73. 52 V., c. 32, s. 16.

By 52 Vic., c. 32, s. 16, it is enacted that the foregoing section "shall apply to all persons indebted or in any way liable to the Company. in the same manner and to the same extent as it now applies to contributories."

Y., in making a deposit on a Government contract, gave a marked cheque for \$8,000; subsequently this was cancelled and the bank issued a deposit receipt for the same amount, Y. afterwards giving the bank his demand note as security for the receipt. Y. was a shareholder in the bank. When it went into liquidation the Government required him to give better security, and upon his doing so assigned to him the deposit receipt—*Held*, that as maker of the note, Y. was a mere debtor, and not a contributory, and that the fact, that as a shareholder he was a contributory, did not alter his position regarding this independent transaction; therefore sec. 73 did not apply, and he was entitled to set off the deposit receipt against his note held by the liquidators of the insolvent bank. *Re The Central Bank of Canada (York's Case)*. (1888). 15 O. R. 625. (In this case the decision of the Supreme Court of Canada in *Ings v. President Bank of Prince Edward Island* (1885), 11 S. C. R. 265 was followed.)

Held, further, that the prohibition in the Act against acquiring debts for the purpose of set-off applies only to the case of contributories. As regards debtor the law of set-off is applicable as if the company was a going concern. In this case the right of set-off virtually arose by reasons of dealings prior to the set-off, for Y. being bound to give security to the satisfaction of the Government, in taking up the deposit receipt and giving better security, was only doing what he was obliged to do by a prior *bona fide* engagement. And see, *Re Moseley, etc., Coke Co. (Barrett's Case)* 4 De G. J. & S. 756.

APPEALS.

101. Appeals in Case of.—Except in the Northwest Territories, any person dissatisfied with an order or decision of the court or a single judge in any proceeding under this Act may;

(a.) **Future Rights.**—If the question to be raised on the appeal involves future rights, or

(b.) **Principal.**—If the order or decision is likely to affect other cases of a similar nature in the winding-up proceedings, or

(c.) **Amount.**—If the amount involved in the appeal exceeds five hundred dollars, by leave of a judge of the court, appeal therefrom. R. S., c. 129, s. 74.

102. Court.—Such appeal shall lie,

(a.) **Ontario.**—In Ontario, to the Court of Appeal for Ontario;

(b.) **Quebec.**—In Quebec, to the Court of King's Bench; R. S., c. 129, s. 74.

(c.) **Manitoba.**—In Manitoba, to the Court of Appeal for Manitoba;

(d.) **Other places.**—In any of the other provinces, or the Yukon Territory, to a Superior Court *in banc*. 7-8 Edw. VII, c. 74, s. 1.

103. Northwest Territories.—In the Northwest Territories any person dissatisfied with an order or decision of the court or a single judge, in any proceeding under this Act, may, by leave of a judge of the Supreme Court of Canada, appeal therefrom to the Supreme Court of Canada. R. S., c. 129, s. 74.

104. Practice—Security.—All appeals shall be regulated, as far as possible, according to the practice in other cases of the court appealed to; but no appeal hereinbefore authorized shall be entertained unless the appellant has, within fourteen days from the rendering of the order or decision, or within such further time as the court or judge appealed from or, in the Northwest Territories, a judge of the Supreme Court of Canada, allows, taken proceedings therein to perfect his appeal, nor unless, within the said time, he has made a deposit or given sufficient security, according to the practice of the court appealed to that he will duly prosecute the said appeal and pay such damages and costs as may be awarded to the respondent. R. S., c. 129, s. 74.

Application was made for a winding-up order against a company whose assets were already being realized under a provincial statute. The court granted the order, appointed the receiver in the former proceedings interim liquidator, and referred the appointment of a permanent liquidator to the master. The order also directed that certain accounts which had been taken in the former proceedings should, so far as they were applicable, be adopted in the winding-up proceedings under the Dominion Act. On appeal it was held that this was an order which could be appealed from as "involving future rights." *Re Union Fire Insurance Co.* (1886), 13 A. R. 268. See per Osler, J. A., pp. 294-5.

When a judge decides that a certain portion of the Act is not *ultra vires*, and on that ground grants a winding-up order, that order can only be set aside by a Divisional Court, and the petition for its rescission should not be presented to another judge sitting alone: *In re Lake Superior Native Copper Co., Ltd., re Plummer* (1885), 9 O. R. 277, per Proudfoot, J., at pp. 280-1.

In England it has been held that the restriction of appeals to those in which notice has been given within a certain time from the date of the order appealed from does not apply to an appeal from any order made on the original petition for winding up. *In re Universal Bank* (1866), L. R., 1 Ch. 428.

The court may reverse an order made in winding-up proceedings although more than the time limited by the statute has elapsed since the order was made. *In re Estates Investment Co., Ex parte Turnley & Oliver* (1869), L. R., 8 Eq. 227.

In England it is the court appealed to which may extend the time for appealing; and it may do so even when the time limited by the statute has expired. *In re Burned's Banking Co. Banner v. Johnston* (1871), L. R., 5 H. L. 157. Under our Act it is the court appealed from which is intrusted with the power of extending the time for an appeal.

105. Dismissing Appeal.—If the party appellant does not proceed with his appeal, according to this Act and the rules of practice applicable to the court appealed to on the application of the respondent, may dismiss the appeal, with or without costs. R. S., c. 129, s. 75.

106. Appeal to Supreme Court of Canada.—An appeal, if the amount involved therein exceeds two thousand dollars, shall, by leave of a judge of the Supreme Court of Canada lie to that court from,

- (a.) The Court of Appeal for Ontario,
- (b.) The Court of King's Bench in Quebec, or
- (c.) A Superior Court in banc, in any of the other provinces or in the Yukon Territories. R. S., c. 129, s. 76.

Leave to appeal *per saltum*, under the Supreme Court Act cannot be granted in a case under the Winding-up Act. An application under the Winding-up Act for leave to appeal from a judgment of the Supreme Court of N.B. was refused where the judge had made no formal order on the petition for a winding-up order and the proceedings before the full court were in the nature of a reference rather than of an appeal from his decision. *In re Cushing Sulphite Fibre Co.*, 1905, 36 S. C. R., 494.

A judgment setting aside an order, made under the Winding-up Act, for the postponement of foreclosure proceedings, and directing that such proceedings should be continued is not a final judgment within the meaning of the Supreme Court Act and does not involve any controversy as to a pecuniary amount. *In re Cushing Sulphite Fibre Co.*, 1906, 37 S. C. R., 173.

A judgment refusing to set aside a winding-up order does not involve any appeal and leave to appeal to the Supreme Court cannot be granted. *Cushing Sulphite Fibre Co. v. Cushing*, 1906, 37 S. C. R., 427.

PROCEDURE.

107. Describing Liquidator.—In all proceedings connected with the company a liquidator shall be described as the "liquidator of the (name of company)," and not by his individual name only. R. S., c. 129, s. 29.

108. Similar to ordinary Suit.—The proceedings under a winding-up order shall be carried on as nearly as may be in the same manner as an ordinary suit, action or proceeding within the jurisdiction of the court. 52 V., c. 32, s. 21.

109. Powers of Court Exercised by a Single Judge.—The powers conferred by this Act upon the court may, subject to the appeal in this Act provided for, be exercised by a single judge thereof; and such powers may be exercised in chambers, either during term on in vacation. R. S., c. 129, s. 77.

110. Court may Refer Matters.—After a winding-up order is made, the court may subject to an appeal, according to the practice of the court in like cases from time to time as to the court may seem meet by order of reference refer and delegate, according to the practice and procedure of the court, to any officer of the court, any of the powers conferred upon the court by this Act. 52 Vic., c. 32, s. 20.

When a claim is made for rent, and the liquidator attacks it on the grounds that the conveyance under which the claimant assumes to be the owner of the premises is a fraudulent preference, and that the alleged lease was never executed, the master has no jurisdiction to adjudicate upon the points thus raised. The proper course is for the liquidator to proceed by way of action under sec. 31. *In re The Sun Lithographing Co. (Farquhar's Claim)*, (1892), 22 O. R. 57.

Under the Ontario Winding-Up Act the security must be given within 8 days. It was held that there was a sufficient compliance with the Act when a bond good in form with proper sureties was filed on the last of the 8 days though not allowed by the judge; but that the person so filing a bond which was not allowed ran the risk of losing his right of appeal if the bond proved to be defective. *Re Union Fire Insurance Co.* (1882), 7 A. R. 783.

111. Service of Process out of Jurisdiction.—The court shall have the power and jurisdiction to cause or allow the service of process or proceedings under this Act to be made on persons out of the jurisdiction of the court in the same manner, and with the like effect, as in ordinary actions or suits within the ordinary jurisdiction of the court. 52 V., c. 32, s. 19.

112. Order of Court to be deemed Judgment.—Every order of the court or judge for the payment of money or costs, charges or expenses made under this Act shall be deemed a judgment of the court, and may be enforced against the person or goods and chattels, lands and tenements of the person ordered to pay, in the manner in which judgments or decrees of any superior court obtained in any suit may bind lands or be enforced in the province where the court making the same is situate. 58-59 V., c. 18, s. 1.

113. Ordinary Practice in Case of Discovery Available.—The practice with respect to the discovery of assets of judgment debtors from time to time in force in the superior courts or in any superior court in the province where any such order is made, shall be applicable to and may be availed of in like manner for the discovery of the assets of any person who by such order is ordered to pay any money or costs, charges or expenses. 58-59 Vic., c. 18, s. 1.

114. Attachment and Garnishment of Debts.—Debts due to any person against whom such order for the payment of money, costs or expenses has been obtained may, in any Province where the attachment and garnishment of debts is allowed by law, be attached and garnished in the same manner as debts in such Province due to a judgment debtor may be attached and garnished by a judgment creditor. R. S., c. 129, s. 79.

115. Witnesses' Attendance—How Secured.—In any action suit, proceeding or contestation under this Act, the court may, order the issue of a writ of *subpoena ad testificandum* or of *subpoena duces tecum*, commanding the attendance, as a witness, of any person who is within Canada. R. S., c. 129, s. 80.

116. Arrest of Absconding Contributory or Official and Seizure of his goods, Chattels and Books.—The court may, at any time before or after it has made a winding-up order upon proof being given that there is reasonable cause for believing that any contributory or any past or present director, manager, officer or employee of the company is about to quit Canada or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such person to be arrested, and his books, papers, moneys, securities for money, goods and chattels to be seized, and him and them to be safely kept until such time as the court orders. R. S. c. 129, s. 52.

When it appeared that a contributory was about to sell his goods for the purpose of evading a call, the court read this section alternatively, and made an order for the seizure of his goods, but refused to order his arrest upon a mere hearsay statement of his intention to leave the country. *In re Imperial Mercantile Credit Co.*, (1867), L. R., 5 Eq. 264.

117. Examination of Persons having Effect of Company, or Information.—The court may, after it has made a winding-up order, summon before it or before any person named by it, any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the court deems capable of giving information concerning the trade, dealings, estate or effects of the company. R. S., c. 129, s. 81.

118. Persons Summoned Refusing to Attend.—If any person so summoned, after being tendered a reasonable sum for his expenses, refuses, without a lawful excuse, to attend at the time appointed, the court may cause such person to be apprehended and brought up for examination. R. S., c. 129, s. 81.

119. Production of Papers.—The court may require any such officer or person to produce before the court any book, paper, deed, writing or other document in his custody or power relating to the company. R. S. c. 129, s. 81.

120. Lien on Documents.—If any person claims any lien on papers, deeds, writings or documents produced by him, such production shall be without prejudice to such lien, and the court shall have jurisdiction in the winding up, to determine all questions relating to such lien. R. S., c. 129, s. 81.

When a judge has ordered a person to be summoned for examination on the ground that he believes him capable of giving information, etc., an appellate court will not interfere with this exercise of his discretion except in an extreme case. *In re Gold Co.* (1879), L. R., 12 C. D. 77. And it has been held that the only ground upon which a person so summoned can contest the validity of the summons is that of want of jurisdiction; and that if the jurisdiction exists the witness has no *locus standi* to appeal against the order. *In re Silkstone & Dodworth Coal & Iron Co. (Whitworth's Case)*, (1881), L. R., 19 C. D. 118. But see, *In re North Australian Territory Co.* (1890), L. R., 45 C. D. 87. A mere creditor

of the company who is not shown to be capable of giving information of the nature referred to in the section is not a person to be examined. *In re Accidental & Marine Insurance Corporation* (1867), L. R., 5 Eq. 22. When shares have been transferred to the name of an infant, the broker who acted in the transfer is a proper person to be summoned in order that he may explain the circumstances of the transaction. *In re Mercantile Credit Association (Clement's Case)*; (1869), L. R., 13 Eq. 179.

Any person indebted to a contributory may be examined as to the latter's means. *In re Land Credit Co. of Ireland (Trower & Lawson's Case)*, (1872), L. R. 14 Eq. 8. The judge granting the summons may direct that the examination shall be confined within certain limits. *In re Silkstone & Dodworth Coal & Iron Co. (Whitworth's Case)*, *supra*.

The manager of a bank where a contributory has had an account may be examined and obliged to produce any books which may throw light on the account. *In re Contract Corporation (Druitt's Case)*, (1872), L. R., 14 Eq. 6.

121. Examination on Oath.—The court or person so named may examine, upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought up in manner aforesaid, concerning the affairs, dealings, estate or effects of the company, and may reduce to writing the answers of any such person, and require him to subscribe the same. R. S., c. 129, s. 82.

122. Inspection of Books and Papers.—After a winding-up order has been made, the court may make such order for the inspection, by the creditors, shareholders, members or contributories of the company, of its books and papers, as the court thinks just.

2. Limitation of Inspection.—Any books and papers in the possession of the company may be inspected in conformity with the order of the court, but not further or otherwise. R. S., c. 129, s. 54.

The inspection is only to be ordered for the purposes of the winding up and for the benefit of those interested therein, and not for the purpose of enabling individual shareholders to establish personal claims against the directors. The section refers only to books, etc., in the possession of the company, and does not empower the court to adjudicate on the ownership of books or papers in the possession of a third party and claimed by him to be his lawful property. *In re North Brazilian Sugar Factories* (1887), 37 C. D. 83.

123. Officer of Company, Mis-applying Money—Order compelling Repayment.—When, in the course of the winding up of the business of a company under this Act, it appears that any past or present director, manager, liquidator, receiver, employee or officer of such company has misapplied or retained in his own hands, or become liable or accountable for any moneys of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally liable, examine into the conduct of such director, manager, liquidator, receiver, officer or employee, and upon such examination, may make an order requiring him to repay any moneys so misapplied or retained, or for which he has become liable or accountable, together with interest, at such rate as the court thinks just, or to contribute such sums of money to the assets of the company, by way of compensation in respect of such misapplication, retention, misfeasance or breach of trust, as the court thinks fit. R. S., c. 129, s. 83.

The powers of a liquidator under this section are wider than were those of the company itself before the winding-up order. See *In re National Funds Assurance Co.* (1878), L. R., 10 C. D. 118. And per Lord Hatherly in *Waterhouse v. Jamieson* (1870), L. R., 2 H. L. (Sc.) 29. But see remarks of Lord Westbury and Lord Chelmsford in the latter case, to the effect that the liquidator merely stands in the place of the company, and in enforcing the rights of creditor, can only succeed where the company would have succeeded.

The executors of deceased directors cannot be proceeded against under this section, as they are not officials of the company. *In re East of England Bank (Fellom's Executors' Case)*, (1865), L. R., 1 Eq. 219. But when some of the directors alleged to be liable under the section are dead, a summons may be taken out against the surviving directors. *In re British Guardian Life Assurance Co.* (1880), L. R., 14 C. D. 335.

When a director of a company which becomes insolvent withdraws money as remuneration to which it is claimed he is not entitled, the matter may be investigated by the master, who has jurisdiction by virtue of this section to make such inquiry, and no formal objection should be allowed to affect the proper operation of the section. (See also subsection 2 of section 77.) *Re Bolt & Iron Co. (Livingstone's Case)*, (1887), 14 O. R. 211; (1889). affirmed on appeal, 16 Ont. A. R. 397.

A director of a company who, having a judgment and execution against its property, acting in good faith, purchases the same at a sale by the mortgagees under a power of sale and resells at a profit, is a trustee of the property for the company (since he could not purchase for his own benefit), and is liable to the liquidator for profit made on the resale. The fact that he appeared at the sale, and thus hampered the bidding, was a breach of trust within the meaning of the section; as was also his refusal to pay over or account for what he made by the subsequent sale. *Re Iron Clay Brick Manfg. Co. (Turner's Case)*, (1889), 19 O. R. 113.

In 1867 Lord Romilly, M.R., held that no order compelling a director or officer of a company to refund any moneys he had misapplied could be made under this section unless the case against such director or officer was clearly and distinctly made out and no question of law was involved. *In re Royal Hotel Co. of Great Yarmouth* (1867), L. R., 4 Eq. 244. But in 1869, Selwyn, L. J. and Gifford, L. J., held that the court certainly had full power under the section to compel a director to refund in any case where he was guilty of having misapplied the moneys of the company, and that there was no such limitations on that jurisdiction as were alleged by Lord Romilly in the case above cited. *In re Mercantile Credit Co. (Stringer's Case)*, (1869), L. R., 4 Ch. 475; Selwyn, L. J., said:—

"It appears to me that if we had now to draw a clause in the widest and fullest manner it would be very difficult to conceive anything more large or comprehensive than the words of the 165th (83rd) sections.

In that case the directors were not ordered to refund, because it was decided that the estimate on which the dividends had been voted was *bona fide*; but the principle, that the court had power to order such repayment in a case where dividends had been paid out of capital, or where the directors had otherwise misapplied the moneys of the company, was fully established, and was adopted in later cases. See *In re County Marine Insurance Co. (Rance's*

Case), (1870), L. R., 6 Ch. 104. And, *In re Alexandra Palace Co.* (1882), 21 C. D. 149.

A person who, being aware of promotion money having been improperly paid on the formation of a company, though not a party to such payment, afterwards becomes a director and takes no steps to recover the money for the company, does not thereby become liable for wilful default or misfeasance under this section. *In re Forest of Dean Coal Mining Co.* (1878), 10 C. D. 450.

If directors apply the moneys of the company for purposes which are *ultra vires*, they are personally liable for a breach of trust; but, if the moneys are applied in a manner which might be sanctioned by the company, a clear case of misfeasance must be established to render them personally liable for the losses thus caused to the company. *In re Faure Electric Accumulator Co.* (1888), 40 C. D. 141.

For several years the directors of a company presented at the general meetings reports in which debts known by them to be bad were entered as assets, an apparent profit being thus made out. Acting on the faith of these reports, the shareholders voted dividends, which were paid by the directors. In the winding-up proceedings the liquidator applied under this section for an order calling on the directors to replace the amount of dividends thus paid out of the capital—*Held*, (1) That even if the shareholders had known the true facts, their ratification of the payment of dividends would only have bound them individually, for the act was one which was *ultra vires* the company, and therefore could not be adopted or ratified by the company. (2) That the fact that the capital thus improperly used was divided amongst the shareholders did not protect the directors, and that the liquidator could compel the directors to replace the money, as the company itself could have done before the commencement of winding-up proceedings. (3) That the directors could not set off (sec. 57) money due them from the company against the moneys they were thus ordered to replace. (4) That the claim was for a breach of trust, and the Statutes of Limitations could not be set up. *In re Exchange Banking Co. (Flitcroft's Case)*, (1882), 21 C. D. 519.

Three minors, at the direction of their father, applied for shares of a company of which he was a director. Upon allotment, he gave them the money then payable. No dividends were ever paid, and a winding-up order was made before any of the minors came of age. They were placed upon the list of contributories, but, when it was discovered, it was held that the father was liable for the calls in arrears, as it was a loss occasioned to the company by his breach of duty as a director in having shares allotted to infants. *In re Crenver & Wheal Abraham United Mining Co., ex parte Wilson* (1872), L. R., 8 Ch. 45.

The mere acting as a director without the necessary share qualification is not, in the absence of some misconduct injurious to the interests of the company, a misfeasance under this section. The section creates no new right, but only provides a summary method of dealing with directors guilty of acts for which they are liable to an action. *In re Canadian Land Reclaiming & Colonizing Co. (Coventry and Dixon's Case)*, (1880), 14 C. D. 660.

Held, that a former owner of bonus shares, which he had before the winding-up transferred to persons entitled to hold them as fully paid up, is not liable to be placed on the list of contributories in respect to them, unless subjected to such liability by the Act under which the company was created or some act relating thereto; *Seem*, however, that such a shareholder, if a director, commits a

breach of trust in being a party to the allotment of the shares as fully paid up, as well as in putting them off on his transferees to the prejudice of the company as fully paid up shares; and such a case is a proper one for an order under sec. 123 for contribution by him by way of compensation in respect of such breach of trust. There is no right of set-off against a sum ordered to be paid under the authority of this section. *In re Wiarton Beet Sugar Co., Freeman's case.* 1906, 12 O. L. R., 149.

124. Dispensing with Notice.—The court may, by any order made after the winding-up order and the appointment of a liquidator, dispense with notice to creditors, contributories, shareholders or members of the company required by this Act, where in its discretion such notice may properly be dispensed with. 52 V., c. 32, s. 11.

125. Courts and Judges Auxiliary—Transfer from one Court to another.—The courts of the various Provinces and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of this Act; and the winding up of the business of the company or any matter or proceeding relating thereto may be transferred from one court to another, with the concurrence, or by the order or orders, of the two courts, or by an order of the Supreme Court of Canada. R. S., c. 129, s. 84.

E. g., when the Exchange Bank of Canada was being wound up under the Act in Quebec, actions brought by the liquidator to upset certain proceedings on the part of the local manager of the bank at Hamilton and his nephew (who had a joint deposit account), were taken in Ontario by leave of the Superior Court of the Province of Quebec. See *Exchange Bank of Canada v. Stinson*, (1885), 8 O. R. 667. And *Exchange Bank of Canada v. Counsell* (1885), 8 O. R. 673 (noted under sec. 99.)

126. Order of one Court may be Enforced by another.—When any order made by one court is required to be enforced by another court, an office copy of the order so made, certified by the clerk or other proper officer of the court which made the same under the seal of such court, shall be produced to the proper officer of the court required to enforce the same. R. S., c. 129, s. 85.

127. Proceeding on Order of Another Court.—Such last mentioned court shall, upon such production of the said certified copy of such order, take the same proceedings thereon for enforcing the order as if it was the order of the court required to enforce it. R. S., c. 129, s. 85.

128. Rules as to Amendments.—The rules of procedure, for the time being, as to amendments of pleadings and proceedings in the court, shall apply, as far as practicable, to all pleadings and proceedings under this Act:

2. Authority to Apply.—Any court before which such proceedings are being carried on shall have full power and authority to apply to such proceeding the appropriate rules of such court as to amendments. R. S., c. 129, s. 86.

129. Irregularity or Default.—No pleading or proceeding shall be void by reason of any irregularity or default which may be amended or disregarded; but the same may be dealt with according to the rules and practice of the court in cases of irregularity or default. R. S., c. 129, s. 87.

130. Powers Conferred by this Act are Supplementary.—Any powers by this Act conferred on the court are in addition to,

and not in restriction of any powers at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company, or his estate, for the recovery of any call or other sum due from such contributory, debtor, estate, and such proceedings may be instituted accordingly. R. S., c. 129, s. 90.

131. Wishes of Creditors.—The court may, as to all matters relating to the winding up, have regard, so far as it deems just, to the wishes of the creditors, contributories, shareholders or members as proved to it by any sufficient evidence. R. S., c. 129, s. 19.

131a. "Solicitors and counsel representing classes of creditors.—The court if satisfied that, with respect to the whole or any portion of the proceedings, the interests of creditors, claimants or shareholders can be classified, may, after notice by advertisement or otherwise, nominate and appoint a solicitor and counsel to represent each or any class for the purpose of the proceedings, and all the persons composing any such class shall be bound by the acts of the solicitor and counsel so appointed, and service upon such solicitor of notices, orders, or other proceedings of which service is required, shall for all purposes be, and be deemed to be, good and sufficient service thereof upon all the persons composing the class represented by him; and the court may, by the order appointing a solicitor and counsel for any class, or by subsequent order, provide for the payment of the costs of such solicitor and counsel by the liquidator of the company out of the assets of the company, or out of such portion thereof as to the court seems just and proper." (Added by 6-7 Edw. VII., c. 51, s. 1.)

132. Liquidator Subject to Summary Jurisdiction of Court.—The liquidator shall be subject to the summary jurisdiction of the court in the same manner and to the same extent as the ordinary officers of the court are subject to its jurisdiction and the performance of his duties may be compelled by order of the court. R. S., c. 129, s. 39.

133. Remedies Obtained by Summary Order.—All remedies sought or demanded for enforcing any claim for a debt, privilege, mortgage, lien or right of property upon, in or to any effects or property in the hands, possession or custody of a liquidator, may be obtained by an order of the court on summary petition, and not by any action, suit, attachment, seizure or other proceeding of any kind whatsoever. R. S., c. 129, s. 39.

The president of a company became responsible to a bank for advances made to it, and the company gave him as security a mortgage on certain lands. In the winding-up proceedings the mortgagee presented a petition asking for an order directing the conveyance to him by the liquidator of the company's equity of redemption—*Held*, that the court had jurisdiction to make the usual order for foreclosure or sale, and that it was a matter of discretion whether it would do so and sanction summary proceedings, by virtue of sec. 39, or whether it would direct an action to be taken. *Re The Essex Land & Timber Co. (Trout's Case)* (1891), 21 O. R. 367.

RULES, REGULATIONS AND FORMS.

134. Judges may make.—Proviso—A majority of the judges of the court, of which the chief justice shall be one, may, from time to time make and frame and settle the forms, rules and regu-

lations to be followed and observed in proceedings under this Act, and make rules as to the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to attorneys, solicitors or counsel, and by or to officers of courts, whether for the officers or for the Crown, and by or to sheriffs, or other persons, or for any service performed or work done under this Act: Provided that in Ontario the judges of the High Court of Justice, and in Quebec, the judges of the Court of King's Bench, or a majority of such judges of which the chief justice shall be one, shall make and settle such forms, rules and regulations. R. S., c. 129, s. 92.

135. Until Rules are Made Procedure of Court to Apply.—

Until such forms, rules and regulations are made, the various forms and procedures, including the tariff of costs, fees and charges in cases under this Act, shall, unless otherwise specially provided be the same, as nearly as may be, as those of the court in other cases. R. S., c. 129, s. 93.

UNCLAIMED DEPOSITS.

136. Unclaimed Dividends to Remain in Bank.—All dividends deposited in a bank and remaining unclaimed at the time of the final winding up of the business of the company shall be left for three years in the bank where they are deposited, subject to the claim of the person entitled thereto:

2. **And Paid to Minister After Three Years.**—If such dividends are unclaimed at the expiration of three years aforesaid they shall be paid over by such bank, with interest accrued thereon, to the Minister.

3. **If Afterwards Claimed.**—If such dividends are afterwards duly claimed, they shall, with such interest, be paid over to the persons entitled thereto. R. S., c. 129, s. 94.

137. Money Deposited Not Paid After Three Years to be Paid to Minister of Finance.—The money deposited in the bank by the liquidator after the final winding up of the business of the company shall be left for three years in the bank, subject to be claimed by the persons entitled thereto and, if not then paid out to such persons, shall be then paid over, with the interest accrued thereon to the Minister and, if afterwards claimed, shall be paid with such interest to the persons entitled to the same. R. S., c. 129, s. 41.

OFFENCES AND PENALTIES.

138. Court May Direct Criminal Proceedings.—When a winding-up order is made, if it appears in the course of such winding up that any past or present director, manager, officer or member of the company is guilty of an offence in relation to the company for which he is criminally liable, the court may, on the application of any person interested in such winding up, or of its own motion, direct the liquidator to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company. R. S., c. 129, s. 96.

139. Destruction of Books or False Entry Therein.—Penalty.—Every person who with intent to defraud or deceive any person, destroys, mutilates, alters or falsifies any book, paper, writing or security, or makes or is privy to the making of any false or fraudulent entry in any register, book of account or other document

belonging to the company, the business of which is being wound up under this Act, is guilty of an indictable offence and liable to imprisonment in the penitentiary for any term not less than two years, or to imprisonment in any gaol or in any place of confinement other than a penitentiary for any term not less than two years, with or without hard labor. R. S., c. 129, s. 95.

140. Failure to Comply With Order of Court a Contempt.—Any liquidator, director, manager, receiver, officer or employee of a company, failing to comply with the requirements or directions of any order made by the court under this Act, shall be guilty of contempt of court and shall be subject to all process and punishments of such court for contempt.

2. Removal of Liquidator from Office.—Any liquidator so failing may in the discretion of the court be removed from office as such liquidator. R. S., c. 129, ss. 33, 39, 40 and 83.

141. Refusal by Officers of Company to Give Information.—Penalty.—Any refusal on the part of the president, directors, officers or employees of the company to give all information possessed by them respectively as to the affairs of the company required by the accountant or other person ordered by the court under this Part to inquire into the affairs of the company and to report thereon shall be a contempt of court and such president, directors, officers and employees shall be subject to all process and punishments of such court as to the affairs of the company. R. S., c. 129, s. 11.

142. Failure to Deposit in Bank Money of Estate.—Penalty.—Every liquidator who shall not within three days after the date of the final winding-up of the business of the company, deposit in the bank appointed or designated as hereinbefore provided, any money belonging to the estate of which he is such liquidator, then in his hands and not required for any other purpose authorized by this Act, with an account of such money, and a sworn statement that the same is all that he has in his hands, shall incur a penalty not exceeding ten dollars and not less than ten per centum per annum interest upon the sums in his hands for every day after the expiration of the said three days on which he neglects or delays such payment. R. S., c. 129, s. 40.

143. Refusal of Witness to Answer or Subscribe a Contempt.—Every person being brought up for examination before the court after the court has made a winding-up order, or appearing before the court for such examination who refuses without lawful excuse, to answer any question put to him or to subscribe any answer made by him on such examination, shall be guilty of contempt of court and shall be subject to all process and punishments of such court for contempt. R. S., c. 129, s. 82.

EVIDENCE.

144. Books to be "prima facie" Evidence of Contents.—If the business of a company is being wound up under this Act, all books of the company and of the liquidators shall, as between the contributors of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded. R. S., c. 129, s. 53.

145. Affidavit Before Whom Sworn.—Every affidavit, affirmation or declaration required to be sworn or made under the provisions or for the purposes of this Act, or to be used in the court in any proceeding under this Act, may be sworn or made in

Canada before a liquidator, judge, notary public, commissioner for taking affidavits or justice of the peace; and out of Canada, before any judge of a court of record, any commissioner for taking affidavits to be used in any court in Canada, any notary public, the chief municipal officer of any town or city, any British consul or vice-consul, or any person authorized by or under any Statute of Canada, or of any Province, to make affidavits. R. S., c. 129, s. 88.

146. Judicial Notice of Seals, Stamp or Signature.—All courts, judges, justices, commissioners and persons acting judicially shall take judicial notice of the seal, or stamp or signature, as the case may be, of any such court, liquidator, judge, notary public, commissioner, justice, chief municipal officer, consul, vice-consul, or other person attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Act. R. S., c. 129, s. 89.

147. Copy of Order Evidence of Order.—When any order made by one court is required to be enforced by another court, the production of an office copy of the order so made certified by the clerk or other proper officer of the court which made the same, under the seal of such court, shall be sufficient evidence of such order having been made. R. S., c. 129, s. 85.

148. Failure To Produce Pass-book, how Proved.—The absence of mention in the minutes of any meeting of contributories, creditors, shareholders or members under this Act, of the production of the liquidator's bank pass-book, shall be *prima facie* evidence that such pass-book was not produced at such meeting. R. S., c. 129, s. 37.

PART II.

BANKS.

149. Application of Part.—The provisions of this Part apply to banks only, not including savings banks. R. S., c. 129, s. 97.

150. Creditor for What Amount to Apply.—The application for a winding-up order shall be made by a creditor for a sum of not less than one thousand dollars. R. S., c. 129, s. 98.

151. Direction of Court for Meeting of Shareholders and Creditors.—The court shall, before making the order, direct a meeting of the shareholders of the bank and a meeting of the creditors of the bank to be summoned, held, and conducted as the court directs for the purpose of ascertaining their respective wishes as to the appointment of liquidators. R. S., c. 129, s. 98.

152. Chairman of Meetings of Shareholders.—The court may appoint a person to act as chairman of the meeting of shareholders, and, in default of such appointment, the president of the bank or other person who usually presides at a meeting of shareholders shall be chairman. R. S., c. 129, s. 99.

153. Chairman of Meeting of Creditors.—The court may also appoint a person to act as chairman of the meeting of creditors, and in default of such appointment, the creditors at the meeting shall appoint a chairman. R. S., c. 129, s. 99.

154. Voting as at a Bank Meeting.—In taking a vote at the meeting of shareholders, regard shall be had to the number of votes conferred by law or by the regulations of the bank on each share-

holder present or represented at such meeting. R. S., c. 129, s. 100.

155. Voting Regulated by Debt.—In taking a vote at the meeting of creditors, regard shall be had to the amount of the debt due to each creditor. R. S., c. 129, s. 100.

156. Report to Court.—Appointment of Liquidators.—The chairman of each meeting shall report the proceedings of the meeting to the court, and if a winding-up order is made, the court shall appoint one or more liquidators, not exceeding three, to be selected in its discretion, after such hearing of the parties as it deems expedient, from among the persons nominated by the majorities and minorities of the shareholders and creditors at such meetings respectively. R. S., c. 129, s. 101; 52 V., c. 32, s. 17.

157. Court Appoints.—If no one has been so nominated, the liquidator or liquidators shall be chosen by the court. 52 Vic., c. 32, s. 18.

Meetings having been held of the shareholders and of the creditors, as provided for by sections 98 and 99, the former recommended the appointment of C., G. and S. as liquidators, whilst the latter wished for that of G., C. and H. It appeared that it would be necessary to resort to the double liability of the shareholders (under sec. 70 R. S. C., c. 120) to satisfy the creditors—*Held* that, as the creditors had the chief and immediate concern in realizing the assets, their choice should be adopted. *Re The Central Bank of Canada* (1887), 15 O. R. 309. And see *In re Association of Land Financiers* (1878), L. R., 10 C. D. 269.

As a general rule it is desirable that the liquidators should be disinterested persons, and preference should therefore be given to one who is neither a shareholder nor a creditor. *Re The Central Bank of Canada* (1887), 15 O. R. 309. *In re The Northumberland, etc., Banking Co.* (1858), 2 DeG. and J. 508.

158. Reservation of Dividends for Outstanding Notes.—The liquidators shall ascertain as nearly as possible the amount of notes of the bank intended for circulation and actually outstanding, and shall reserve dividends on any part of the said amount in respect of which claims are not filed until the expiration of at least two years after the date of the winding-up order or until the last dividend, if such last dividend is not made until after the expiration of the said time.

2. Applied to Subsequently Filed Claims.—If claims are not filed and dividends applied for in respect of any part of the said amount before the period by this section limited, the dividends so reserved shall form the last or part of the last dividend. R. S., c. 129, s. 103.

159. Publication of Notices.—Publication in the *Canada Gazette* and in the official *Gazette* of each Province and in two newspapers issued at or nearest to the place where the head office of a bank is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to holders of bank notes in circulation;

2. In Quebec, Publication in English and French.—If the head office is situated in the Province of Quebec, one of the newspapers in which publication is to be made shall be a newspaper published in English and the other a newspaper published in French. R. S., c. 129, s. 104.

PART III.

LIFE INSURANCE COMPANIES.

160. Application of Part.—The provisions of this Part apply only to life insurance companies, and to insurance companies doing life and other insurance in so far as relates to the life insurance business of such companies. R. S., c. 129, s. 105.

161. Company Without License Liable as for Insolvency. Whenever a license of a company has expired or been withdrawn under the Insurance Act, and has not been renewed within thirty days after such expiry or withdrawal, the company shall be subject to the provisions of this Act applicable to the case of insolvency of such a company, except in case of,—

(a) **Exceptions.**—A company which previously to the twenty-eighth day of April, one thousand eight hundred and seventy-seven, was licensed to transact the business of life insurance in Canada and ceased to transact such business before the twenty-first day of March, one thousand eight hundred and seventy-eight, having before that date given written notice to that effect to the Minister; or

(b) A company licensed under the Insurance Act to transact the business of life insurance in Canada which has in manner provided by the said Act, procured the transfer of its outstanding policies in Canada to some company or companies licensed under the said Act, or obtained the surrender of its policies as far as practicable. R. S., c. 129, s. 106.

162. Application of Deposits and Assets.—In case of the insolvency of any company, the deposits of such company held by the Minister and the assets held by the trustees under "*The Insurance Act*," shall be applied *pro rata* towards the discharge of all claims of policyholders in Canada duly authenticated against such company. R. S., c. 129, s. 107.

163. Claims of Policyholders in Canada.—Upon the insolvency of any company and the making of a winding-up order under this Act, the policyholders in Canada shall be entitled to claim for the full net values including bonus additions and profits accrued, of their several policies at the time of the winding-up order, less any amount previously advanced by the company on the security of the policy;

2. Rank with Judgments.—Such claims shall rank with judgments obtained and claims matured on Canadian policies, in the distribution of the assets. R. S., c. 129, s. 108.

164. Valuation of Policies.—The liquidator may require the Superintendent of Insurance to value or procure to be valued under his supervision the policies of the policyholders in Canada on the basis prescribed in "*The Insurance Act*";

2. Expenses.—The expenses of such valuation, at a rate of three cents for each policy or bonus addition so valued shall be retained by the Minister from the securities held by him. 62-63 Vic., c. 43, s. 6.

165. Sale of Securities and Assets by order of the Court.—Upon the completion by the liquidator of the statement to be prepared by him of all judgments against the company upon policies in Canada, and of all claims upon policies matured or outstanding, the court shall cause the securities held by the Minister for such company, and the assets held by the trustees provided in "*The Insurance Act*," or any part of them it deems fit, to be sold

or realized in such manner and after such notice and formalities as the court appoints. R. S., c. 129, s. 108.

166. Distribution of Proceeds.—The proceeds so realized, after paying expenses incurred, shall, except in so far as they have been applied, under this Act, to effect a reinsurance of policies, be distributed *pro rata* amongst the claimants, according to such statement:

2. Recourse of Proceeds do not Cover Claims.—If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policy-holders shall not be barred from any recourse they have, either in law or equity, against the company issuing the policy or against any shareholder or director thereof, other than for a share in the distribution of the proceeds aforesaid or in respect to any distribution of the general property and assets of the company, other than the deposit and the assets vested in trustees. R. S., c. 129, s. 108.

Prior to 1872, the mode of valuing policies in winding up insolvent life insurance companies was to estimate the sum which would be required to purchase a policy for the same amount at the same premium in a solvent company. See, in *re English Assurance Co. (Holdich's Case)*. (1872), L. R., 14 Eq. 72. But by sec. 5 of the Life Assurance Companies' Act (35 and 36 Vic., c. 41 Imp.), it was enacted that thereafter the value of such policies should be estimated in the manner provided for in the first schedule to that Act, *i.e.*, the value was to be the difference in the present value of the reversion in the sum assured on decease (including any bonus or addition made thereto before the commencement of winding-up proceedings), and the present value of the future annual premiums; while the rate of interest in calculating such present values was to be four per centum per annum, and the rate of mortality "that of the tables known as the seventeen offices' experience tables."

167. Claim on Cancellation of Policy or Contract.—Whenever the company or the liquidator, or the holder of the policy or contract of insurance exercises any right, which it or he has, to cancel any policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation. R. S., c. 129, s. 109.

168. Statement of Creditors to be Prepared by the Liquidator.—Proviso: for Contestation.—The liquidator shall, without the filing of any claim, notice or evidence, or the taking of any action by any person, make a statement of all the persons appearing, by the books and records of the officers of the company, to be creditors or claimants on any matured, valued or cancelled policy or contract of insurance, and of the amount due to each such person in respect of such claims, and every such person shall be collocated and ranked as and shall be entitled to the right of a creditor or claimant for such amount, without filing any claim, notice or evidence, or taking any action: Provided that any such collocation may be contested by any person interested, and any person who is not collocated or who is dissatisfied with the amount for which he is collocated, may file his own claim. R. S., c. 129, s. 110.

169. Copy of Statement to be Filed.—A copy of such statement, certified by the liquidator, shall forthwith, after the making of such statement, be filed in the office of the superintendent of insurance at Ottawa;

2. Notice to be given by Publication.—Notice of such filing shall forthwith be given by the liquidator by notice in the *Canada Gazette* and in the official *Gazette* of each Province and in two newspapers issued at or nearest to the place where the head office in Canada of the company is situate;

3. Notice to be given by Mail.—The liquidator shall also, forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known, and in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known. R. S., c. 129, s. 110.

170. Claims Accruing after the Winding-Up Order but within Thirty Days thereof.—**Claims Accruing after Thirty Days.**—The holder of a policy or contract of life insurance, upon which a claim accrues after the date of the winding-up order and before the expiration of thirty days after the filing, in the office of the superintendent of insurance, of the statement referred to in the last preceding section, shall be entitled to claim as a creditor for the full net amount of such claim—less any amount previously advanced by the company on the security of the policy or contract; and the said statement and the dividend sheet shall, if necessary, be amended accordingly:—Provided that no claim which accrues after the expiration of the thirty days aforesaid shall rank upon the estate unless nor until there is sufficient to pay all creditors in full. R. S., c. 129, s. 111.

171. Holder giving Notice of Willingness to Reinsure.—**Reinsurance must be part of General Scheme.**—If, before the expiration of the thirty days hereinbefore mentioned, the holder of a policy or contract of life insurance, on which a claim has not accrued, signifies, in writing, to the liquidator, his willingness to accept an insurance in some other company for the amount which can be secured by the dividend on his claim to which such holder is or may become entitled, the liquidator may, with the sanction of the court, effect for such holder an insurance to the amount aforesaid in another company or companies, approved of by the superintendent of insurance, and may apply to that purpose the dividend on his claim to which such holder is or may become entitled: Provided that such insurance shall be effected only as part of a general scheme for the assumption, by some other company or companies, of the whole or part of the outstanding risk and liabilities of the insolvent company. R. S., c. 129, s. 112.

172. Report to the Superintendent of Insurance.—If the company is licensed under "*The Insurance Act*," the liquidator shall report to the superintendent of insurance once in every six months, or oftener as the superintendent requires, on the condition of the affairs of the company, with such particulars as the superintendent requires. R. S., c. 129, s. 113.

173. What is Sufficient Notice to Holders of Policies.—Publication in the *Canada Gazette* and in the official *Gazette* of each Province of Canada, and in two newspapers issued at or nearest to the place where the head office in Canada of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors should be notified, shall be sufficient notice to

holders of policies or contracts of insurance in respect of which no notice of claim has been received. R. S., c. 129, s. 114.

PART IV.

OTHER THAN LIFE INSURANCE COMPANIES.

174. Application of Part.—The provisions of this Part apply only to insurance companies other than life insurance companies, and to insurance companies doing life and other insurance, in so far as relates to the insurance business of such companies which is not life insurance business. R. S., c. 129, s. 115.

175. When a Company shall be Deemed Insolvent.—Any company shall be deemed insolvent upon its failure to pay any undisputed claim arising, or loss insured against, in Canada, upon any policy held in Canada, for the space of sixty days after becoming due, or, if disputed, after final judgment and tender of a legal valid discharge, and (in either case) after notice thereof to the Minister;

2. Time for Notice to the Minister.—In any case when a claim for loss is, by the terms of the policy, payable on proof of such loss, without any stipulated delay, the notice to the Minister under this section shall not be given until after the lapse of sixty days from the time when the claim becomes due. R. S., c. 129, s. 116.

176. Application of Deposit held by Minister.—Any deposit held by the Minister for policyholders shall be applied *pro rata* towards the payment of all claims duly authenticated against such company, upon or in respect of policies issued to policyholders in Canada. R. S., c. 129, s. 117.

177. Return Premium.—Holders of policies or contracts of insurance on which no claim has accrued at the time the winding-up order is made, shall be entitled to claim as creditors, for such part of the premium paid as is proportionate to the period of their policies or contracts respectively unexpired at the date of the winding-up order;

2. Ranks as Judgment.—Such return or unearned premium shall rank with judgments obtained and claims accrued, in the distribution of the assets. R. S., c. 129, s. 118.

178. Sale of Securities.—Upon the completion of the statement to be prepared by the liquidator under this Act, the court shall cause the securities held by the Minister for the company, or any part of them it deems fit, to be sold in such manner and after such notice and formalities as the court appoints.

2. Application of Proceeds.—The proceeds thereof, after paying expenses incurred, shall (except in so far as they have been applied under this Act to effect a re-insurance of the policies) be distributed *pro rata* among the claimants according to such statement;

3. Recourse in Case of Insufficiency of Proceeds.—If the proceeds are not sufficient to cover in full all claims recorded in the statement, such policyholders shall not be barred from any recourse they have either at law or in equity against the company issuing the policy, other than that for a share in the distribution of the proceeds of the securities held for such company by the Minister. R. S., c. 129, s. 118.

179. Claim when Policy Cancelled.—Whenever the company or the liquidator or the holder of the policy or contract of insurance, exercises any right which it or he has to cancel the policy or contract, the holder shall be entitled to claim as a creditor for the sum which, under the terms of the policy or contract, is due to him upon such cancellation. R. S., c. 129, s. 118.

180. Statement to be Made by Liquidators.—The liquidator shall, without the filing of any claim, notice or evidence, or the taking of any action by any person, make a statement of all the persons appearing, by the books and records of the officers of the company, to be creditors or claimants under the three last preceding sections and of the amounts due to each such person thereunder. R. S., c. 129, s. 119.

181. Collocation and Rank—Contestation.—Every such person shall be collocated and ranked as and shall be entitled to the rights of a creditor or claimant for such amount, without filing any claim, notice or evidence, or taking any action: Provided that any such collocation may be contested by any person interested, and any person not collocated or dissatisfied with the amount for which he is collocated, may file his own claim. R. S., c. 129, s. 119.

182. Copy to be Filed—Notice of Publication.—A copy of such statement, certified by the liquidator, shall forthwith, after the making of such statement, be filed in the office of the superintendent of insurance, at Ottawa, and notice of such filing shall be forthwith given by the liquidator by notice in the *Canada Gazette*, and in the official *Gazette* of each Province and in two newspapers published at or nearest the place where the head office in Canada of the company is situate. R. S., c. 129, s. 119.

183. Notice by mail.—The liquidator shall also forthwith send by mail, prepaid, a notice of such filing to each creditor named in the statement, addressed to the addresses in Canada of such creditors, as far as the same are known—and in the case of foreign creditors, addressed to the addresses of their representatives or agents in Canada, as far as the same are known. R. S., c. 129, s. 119.

184. If a Claim Accrues after the Winding-Up Order, but within Thirty Days of Filing of Statement.—Claims accruing after Thirty Days.—The holder of a policy or contract of insurance upon which a claim accrues after the date of the winding-up order, and before the expiration of thirty days after the filing, in the office of the superintendent of insurance, of the statement aforesaid, shall be entitled to claim, as a creditor, for the full net amount of such claim; and the said statement and the dividend sheet shall, if necessary, be amended accordingly; Provided that no claim which accrues after the expiration of the thirty days hereinbefore mentioned shall rank upon the estate, unless nor until there is sufficient to pay all creditors in full. R. S., c. 129, s. 120.

185. Re-Insurance.—Before the expiration of the thirty days aforesaid, the liquidator may, with the sanction of the court, arrange with any incorporated insurance company, approved of for such purpose by the superintendent of insurance, for the re-insurance by such company of the outstanding risks of the insolvent company, and for the assumption by such company of the whole or any part of the other liabilities of the insolvent company. R. S., c., 129, s. 121.

186. Payment of Premium.—In case of such arrangement the liquidator may pay or transfer to such company such of the assets of the insolvent company as may be agreed on as the consideration for such reinsurance or assumption, and in such case the arrangement for reinsurance shall be in lieu of the claim for unearned premium;

2. Application of Surplus.—Any remaining assets of the insolvent company shall be retained by the liquidator as a security to the creditors for the payment of their claims, and shall, if necessary, be so applied, and shall not be returned to the company, except on the order of the court after the satisfaction of such claims. R. S., c. 129, s. 121.

187. Report to Superintendent of Insurance.—If the company is licensed under "*The Insurance Act*," the liquidator shall report to the superintendent of insurance once in every six months, or oftener, as the superintendent requires, on the condition of the affairs of the company, with such further particulars as the superintendent requires. R. S., c. 129, s. 122.

188. What Publication of Notice Sufficient.—Publication in the *Canada Gazette*, and in the official *Gazette* of each Province, and in two newspapers published at or nearest the place where the head office of an insurance company is situate, of notice of any proceeding of which, under this Act, creditors are to be notified, shall be sufficient notice to holders of policies or contracts of insurance, in respect of which no notice of claim has been received. R. S., c. 129, s. 123.

LIMITATION OF ACTIONS AND PRESCRIPTION.

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BRITISH COLUMBIA.

R. S. B. C. 1897, CHAP. 123.

AN ACT FOR LIMITATION OF ACTIONS, AND FOR AVOIDING OF SUITS IN LAW.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as the “Statute of Limitations.”

DIVISION OF ACT.

2. Division of Act.—This Act is divided into four parts relating to the following subject-matters:—

The First Part,—to the limitation of personal actions, actions for debts, and of account;

The Second Part,—to the limitation of actions as to real property;

The Third Part,—to the limitation of actions for recovery of specialty debts;

The Fourth Part,—to the limitation of certain causes of action arising abroad.

PART I.

LIMITATION OF PERSONAL ACTIONS, ACTIONS FOR DEBTS, AND OF ACCOUNT.

3. Limitation of certain personal actions.—All actions of trespass *quare clausam fregit*; all actions of trespass, detinue, action sur trover, and replevin for taking away of goods and cattle; all actions of account and upon the case (other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants); all actions of debt grounded upon any lending or contract without specialty; all actions of debt for arrearages of rent; and all actions of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time, shall be commenced and sued within the time and limitation hereafter expressed, and not after, that is to say:

The said actions upon the case (other than for slander), and the said actions for account; and the said actions for trespass, debt, detinue, and replevin for goods or cattle; and the said action of trespass *quare clausam fregit*, within six years after the cause of such actions or suit and not after:

And the said actions of trespass, of assault, battery, wounding, imprisonment, or any of them, within four years next after the cause of such actions or suit, and not after:

And the said action upon the case for words, within two years next after the words spoken, and not after. 21 Jac. 1, c. 16, s. 3, *in part*; 4 & 5 Anne, c. 16, s. 1.

4. Limitation of action for "merchant's accounts."—

All actions of account, or for not accounting, and suits for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within six years after the cause of such actions or suits, or when such cause has already arisen, then within six years after the passing of this Act; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforceable by action or suit by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action or suit. 19 & 20 Vict., c. 97, s. 9.

5. Part payment by one contractor not to prevent bar by statute in favour of another or others.—When there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor or administrator, shall lose the benefit of the preceding sections, or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money, by any other or others of such co-contractors, co-debtors, executors or administrators. 19 & 20 Vict., c. 97, s. 14.

6. Their limitation after judgment.—And, nevertheless, if in any of the said actions or suits judgment be given for the plaintiff, and the same be reversed by error, or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment, the judgment, be given against the plaintiff that he take nothing by his plaint, writ, or bill:

In all such cases the party plaintiff, his heirs, executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, and not after. 21 Jac., 1, c. 16, s. 4.

7. After a judgment or nonsuit in a "quare clausam fregit" plaintiff is barred to renew the suit after disclaimer.—In all actions of trespass *quare clausam fregit* hereafter to be brought wherein the defendant or defendants shall disclaim in his or their plea to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntarily, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntarily, and a tender or offer of insufficient amends for such trespass before the action brought, whereupon or upon some of them the plaintiff or plaintiffs shall be enforced to join issue:

And if the said issue be found for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions and all other suits concerning the same. 21 Jac., 1, c. 16, s. 5.

8. Infants, "femes covert," etc., exempted.—Provided nevertheless, that if any person or persons that is or shall be entitled to any such action of trespass, detinue, action sur trover, replevin, actions of accounts, actions of debts, action of trespass for assault,

menace, battery, wounding, or imprisonment actions upon the case for words, be, or shall be at the time of any such cause of action given or accrued, fallen or come within the age of twenty-one years, *feme covert*, or *non compos mentis* that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are before limited after their coming to or being of full age, discover, or of sane memory. 21 Jac., 1, c. 16, s. 7; 19 and 20 Vict., c. 97, s. 10.

9. Action against persons beyond the seas may be brought at any time within six years after their return.—If any person or persons against whom there is or shall be any cause of suit or action of trespass, detinue, actions *sur trover* or *replevin*, for taking away goods or cattle, or of action of account or upon the case, or of debt grounded upon any lending or contract without speciality, of debt for arrearages of rent, or assault, menace, battery, wounding, and imprisonment, or any of them, be or shall be at the time of any such cause, or suit or action given or accrued, or fallen or come beyond the seas, that then such person or persons, who is or shall be entitled to any suit or action, shall be at liberty to bring the said actions against such person or persons after their return from beyond the seas, within such times as are respectively limited for the bringing of the said actions by this Act. 4 and 5 Anne, c. 3 (or 16), s. 19.

10. Period of limitation to run as to joint debtors in the jurisdiction though some are beyond seas.—Where such cause of action or suit with respect to which the period of limitation is fixed by this Act, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time of the cause of action or suit accrued, after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more such joint debtors who was not or were not beyond the seas at the time aforesaid. 19 and 20 Vict., c. 97, s. 11.

11. Limitation of actions against Justices of the Peace.—That no action shall be brought against any Justice of the Peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed; and all prosecutions against Justices for penalties incurred by them, under any law or statute for the time being in force, wherein no other period of limitation is provided, shall be commenced within six months next after the cause of action accrued. 11 and 12 Vict., c. 44, s. 8, and C. A. 1888, c. 78, s. 22.

12. In actions of debt or upon the case, no acknowledgment shall be deemed sufficient unless it be in writing, or by part payment.—In actions of debts, or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing

contract whereby to take any case out of the operation of section 3 of this Act, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby; and

Joint contractors.—Where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor, or administrator shall lose the benefit of the said enactment, so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them:

Part payment.—Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever:

Proviso for the case of joint contractors.—Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by the foregoing provisions of this Act or any of them as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff. 9 Geo. 4. c. 14. s. 1.

13. Provision for acknowledgments by agents.—Any acknowledgment or promise made or contained by or in a writing, signed by an agent of the party chargeable thereby duly authorised to make such acknowledgment or promise, shall have the same effect as if such writing had been signed by such party himself. 19 and 20 Vict., c. 97, s. 13.

14. Indorsements of payments.—No indorsement or memorandum of any payment written or made after the time appointed for this Act to take effect, upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of either of the said Statutes. 9 Geo. 4, c. 14, s. 3.

PART II.

LIMITATION OF ACTIONS AS TO REAL PROPERTY.

15. Interpretation.—The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Part, except where the nature of the provision or the context of the Part shall exclude such construction, be interpreted as follows, that is to say:—

“Land.”—The word “land” shall extend to manors, messuages, and all other corporeal hereditaments whatsoever, and also to tithes (other than tithes belonging to a spiritual or eleemosynary corporation sole), and also to any share, estate, or interest in them, whether the same shall be a freehold or chattel interest, and whether freehold or copyhold, or held according to any other tenure; and

“Rent.”—The word “rent” shall extend to all heriots, and to

all services and suits for which a distress may be made, and to all annuities and periodical sums of money charged upon or payable out of any land (except moduses of compositions belonging to a spiritual or eleemosynary corporation sole); and

Person through whom another claims.—The person through whom another person is said to claim shall mean any person by, through, or under, or by the act of whom, the person so claiming became entitled to the estate or interest claimed, as heir, issue in tail, tenant by the courtesy of England, tenant in dower, successor, special, or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise, and also any person who was entitled to an estate or interest to which the person so claiming, or some person through whom he claims, became entitled as lord by escheat; and

"Person."—The word "person" shall extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as an individual. 3 and 4 Will. 4, c. 27, s. 1.

16. No land or rent to be recovered, but within 20 years after right of action accrued to claimant or person through whom he claims.—No person shall make an entry or distress or bring an action to recover any land or rent but within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action, shall have first accrued to the person making or bringing the same. 3 and 4 Will., 4, c. 27, s. 2.

17. When the right shall be deemed to have accrued.—In the construction of this part of this Act, the right to make an entry or distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say:

In the case of an estate in possession—On dispossession or abatement.—When the person claiming such land or rent, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession or at the last time at which any such profits or rent were or was so received; and

On death.—When the person claiming such land or rent shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and

On alienation.—When the person claiming such land or rent shall claim in respect of an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the pos-

session or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and

In case of future estates.—When the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land or the receipt of such rent in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and

In case of forfeiture or breach of condition.—When the person claiming such land or rent, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition was broken. 3 and 4 Will. 4, c. 27, s. 3.

18. If advantage of forfeiture is not taken by remainderman, he shall have a new right when estate comes into possession.—Provided always, that when any right to make an entry or distress or to bring an action to recover any land or rent by reason of any forfeiture or breach of condition shall have first accrued in respect of any estate or interest in reversion or remainder, and the land or rent shall not have been recovered by virtue of such right, the right to make an entry or distress or bring action to recover such land or rent shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened. 3 and 4 Will. 4, c. 27, s. 4.

19. Reversioner to have a new right.—Provided also, that a right to make an entry or distress or to bring an action to recover any land or rent shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall, at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land, or in receipt of such rent. 3 and 4 Will. 4, c. 27, s. 5.

20. An administrator to claim as if he obtained the estate without interval.—For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of letters of administration. 3 and 4 Will. 4, c. 27, s. 6.

21. In the case of a tenant at will the right shall be deemed to have accrued at the end of one year.—When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the

person entitled subject thereto, or of the person through whom he claims, to make an entry or distress or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined:

Provided always, that no mortgagor or *cestui que trust* shall be deemed to be a tenant at will, within the meaning of this clause, to his mortgagee or trustee. 3 and 4 Will. 4, c. 27, s. 7.

22. No person after a tenancy from year to year to have any right, but from the end of the first year or last payment.—When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy shall have been received (which shall last happen). 3 and 4 Will. 4, c. 27, s. 8.

23. Where rent amounting to five dollars or upwards reserved by a lease in writing, shall have been wrongfully received, no right to accrue on the determination of the lease.—When any person shall be in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing, by which a rent amounting to the yearly sum of five dollars or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims, to make an entry or distress or to bring an action after the determination of such lease shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled. 3 and 4 Will. 4, c. 27, s. 9.

24. A mere entry not to be deemed possession.—No person shall be deemed to have been in possession of any land within the meaning of this Act merely by reason of having made an entry thereon. 3 and 4 Will. 4, c. 27, s. 10.

25. No right to be preserved by continual claim.—No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. 3 and 4 Will. 4, c. 27, s. 11.

26. Possession of one coparcener or joint tenant, etc., not to be deemed possession of others.—When any one or more of several persons entitled to any land or rent as coparceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons

other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons, or any of them. 3 and 4 Will. 4, c. 27, s. 12.

27. Possession of a relation of the heir not possession of heir.—When a relation of the person entitled as heir to the possession or receipt of the profits of any land, or to the receipt of any rent, shall enter into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the person entitled as heir. 3 and 4 Will. 4, c. 27, s. 13.

28. Acknowledgment in writing equivalent to possession or receipt of rent.—Provided always, that when any acknowledgment of the title of the person entitled to any land or rent shall have been given to him or his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession or receipt of or by the person by whom such acknowledgment shall have been given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment shall have been given at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. 3 and 4 Will. 4, c. 27, s. 14.

29. Persons under disability to be allowed 10 years.—If at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned (that is to say), infancy, coverture, idiotcy, lunacy, unsoundness of mind, or absence beyond seas, then such person, or the person claiming through him, may notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or distress or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disability, or shall have died (which shall have first happened). 3 and 4 Will. 4, c. 27, s. 16.

30. No action shall be brought beyond 40 years after the right accrued.—No entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress or to bring an action to recover any land or rent shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the time at which he shall have ceased to be under any such disability, or have died, shall not have expired. 3 and 4 Will. 4, c. 27, s. 17.

31. No further time to be allowed for a succession of disabilities.—When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent, beyond the said period of twenty years next after the right of such person to make an entry or distress or to bring an action to recover such land or rent shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person. 3 and 4 Will. 4, c. 27, s. 18.

32. When the right to an estate in possession is barred, the right of the same person to future estates shall also be barred.—When the right of any person to make an entry or distress or bring an action to recover any land or rent to which he may have been entitled for an estate or interest in possession shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the said period have been entitled to any other estate, interest, right, or possibility, in reversion, remainder or otherwise, in or to the same land or rent, in respect of such other estate, interest, right, or possibility, unless in the meantime such land or rent shall have been recovered by some person entitled, to an estate, interest, or right which shall have been limited or taken effect after or in defeasance of such estate or interest in possession. 3 and 4 Will. 4, c. 27, s. 20.

33. Where tenant in tail is barred remaindermen whom he might have barred shall not recover.—When the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same shall have been barred by reason of the same not having been made or brought within the period hereinbefore limited, which shall be applicable in such case, no such entry, distress, or action shall be made or brought by any person claiming any estate, interest, or right which such tenant in tail might lawfully have barred. 3 and 4 Will. 4, c. 27, s. 21.

34. Possession adverse to a tenant in tail shall run on against the remaindermen whom he might have barred.—When a tenant in tail of any land or rent, entitled to recover the same, shall have died before the expiration of the period hereinbefore limited, which shall be applicable in such case, for making an entry or distress or bringing an action to recover such land or rent, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. 3 and 4 Will. 4, c. 27, s. 22.

35. Where there is possession under an assurance by a tenant in tail which shall not bar the remainders, they shall be barred at the end of twenty years after the time when the assurance would have barred them.—When a tenant in tail of any land or rent shall have made an assurance thereof, which shall not operate to bar an estate or estates to take effect after or in defeasance of his estate tail, and any person shall by

virtue of such assurance, at the time of the execution thereof or at any time afterwards, be in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person, or any other person whatsoever (other than some person entitled to such possession or receipt in respect of an estate which shall have taken effect after or in defeasance of the estate tail), shall continue or be in such possession or receipt for the period of twenty years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then at the expiration of such period of twenty years such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest or right to take effect after or in defeasance of such estate tail. 3 and 4 Will. 4, c. 27, s. 23.

36. Limitation as to suits in equity.—No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress or brought an action to recover the same respectively if he had been entitled at law to such estate, interest, or right in or to the same as he shall claim therein in equity. 3 and 4 Will. 4, c. 27, s. 24.

37. In cases of express trust the right not to accrue until conveyance.—When any land or rent shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. 3 and 4 Will. 4, c. 27, s. 25.

38. As to cases of fraud, right to be deemed to have accrued on discovery of fraud.—In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall or with reasonable diligence might have been first known or discovered: Provided that nothing in this clause contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know and had no reason to believe that, any such fraud had been committed. 3 and 4 Will. 4, c. 27, s. 26.

39. Saving the jurisdiction of equity on the ground of acquiescence.—Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of Courts of Equity in refusing relief, on the ground of acquiescence or otherwise, to any person whose right to bring a suit may not be barred by virtue of this Act. 3 and 4 Will. IV., c. 27, s. 27.

40. Mortgagor to be barred at the end of 20 years from the time when the mortgagee took possession, or from the last written acknowledgment.—When a mortgagee shall have obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor or any person claiming through him shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment of the title of the mortgagor or of his right of redemption shall have been given to the mortgagor, or some person claiming his estate, or to the agent of such mortgagor or person, in writing signed by the mortgagee or the person claiming through him:

Acknowledgment given to one mortgagor to operate in favour of all.—And in such case no such suit shall be brought but within twenty years next after the time at which such acknowledgment or the last of such acknowledgments, if more than one, was given; and when there shall be more than one mortgagor, or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any one of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons:

Acknowledgment given by one of several mortgagees to be effectual only against the mortgagee signing same.—But where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money, or land or rent, by, from, or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent:

Where the mortgagee giving such acknowledgment is entitled to a divided part of mortgaged premises, mortgagor may redeem such divided part.—And where such of the mortgagees or persons aforesaid as shall have given such acknowledgment shall be entitled to a divided part of the land or rent comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent shall bear to the value of the whole of the land or rent comprised in the mortgage. 3 and 4 Will. IV., c. 27, s. 28.

41. At the end of the period of limitation the right to be extinguished.—At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any writ of *quare impedit* or other action or suit, the right and title of such person to the land, rent, or advowson, for the recovery whereof such entry, distress, action, or suit respectively might have been made or brought within such period, shall be extinguished. 3 and 4 Will. IV., c. 27, s. 34.

42. Receipt of rent deemed receipt of profits.—The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Act. 3 and 4 Will. IV., c. 27, s. 25.

43. Money charged upon land and legacies to be deemed satisfied at the end of 20 years, if there shall be no interest paid or acknowledgment in writing in the meantime.—No action or suit, or other proceeding, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon, or payable out of, any land or rent at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment, of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent:

And in such case no such action or suit or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one was given. 3 and 4 Will. IV., c. 27, s. 40.

44. No arrears of dower to be recovered for more than six years.—No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit. 3 and 4 Will. IV., c. 27, s. 41.

45. No arrears of rent or interest to be recovered for more than six years.—No arrears of rent or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action, or suit but within six years next after the same respectively shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent:

Provided, nevertheless, that where any prior mortgagee or other incumbrancer shall have been in possession of any land, or in the receipt of the profits thereof, within one year next before an action or suit shall be brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which shall have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years. 3 and 4 Will. IV., c. 27, s. 42.

46. Absence beyond seas or imprisonment of a creditor not to be a disability.—No person or persons who shall be entitled to any action or suit with respect to which the period of limitation within which the same shall be brought is fixed by sections 43, 44 and 45, of this Act, shall be entitled to any time within which to commence and sue such action or suit beyond the per-

iod so fixed for the same by the enactments aforesaid, by reason only of such person, or some one or more of such persons, being, at the time of such cause of action or suit accrued, beyond the seas, or, in the cases in which imprisonment is now a disability, by reason of such person, or one or more of such persons, being imprisoned at the time of such cause of action or suit accrued. 19 and 20 Vict., c. 97, s. 10.

47. Period of limitation to run as to joint debtors in the jurisdiction, though some are beyond seas.—Where such cause of action or suit with respect to which the period of limitation is fixed by sections 43, 44, and 45 of this Act, or any of them, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were, at the time such cause of action accrued, beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond the seas at the time the cause of action or suit accrued, after his or their return from beyond the seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was or were not beyond the seas at the time aforesaid. 19 and 20 Vict., c. 97, s. 11.

48. Mortgagees of land within the definition of sec. 15 of this Act may bring actions to recover land within 20 years after last payment of principal and interest.—It shall and may be lawful for any person entitled to or claiming under any mortgage of land being within the definition contained in section 15 of this Act to make an entry or bring an action at law or suit in equity to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than twenty years may have lapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued, anything in this Act notwithstanding. 7 Will. IV., and 1 Vict., c. 28, s. 1.

49. The Crown not to sue after sixty years by reason of lands having been in charge.—The Queen's Majesty, her heirs and successors, shall not at any time hereafter sue, impeach, question or implead any person or persons for or in anywise concerning any manors, lands, tenements, rents, tithes or hereditaments whatsoever (other than liberties or franchises) which such person or persons, or his or their or any of their ancestors or predecessors, or those from, by, or under whom they do or shall claim, have, or shall have held or enjoyed or taken the rents, revenues, issues or profits thereof by the space of sixty years next before the filing, issuing, or commencing of every such action, bill, plaint, information, commission, or other suit or proceeding as shall at any time or times hereafter be filed, issued, or commenced for recovering the same or in respect thereof, by reason only that the same manors, lands, tenements, rents, tithes or hereditaments, or the rents, revenues, issues, or profits thereof have or shall have been in charge to Her Majesty or her predecessors or successors, or stood

insuper of record within the said space of sixty years, but that such having been in charge and such standing insuper of record shall be as against such person and persons, and all claiming by, from or under them or any of them, of no force and effect. 24 and 25 Vict., c. 62, s. 1.

PART III.

LIMITATION OF ACTIONS FOR RECOVERY OF SPECIALTY DEBTS.

50. Limitation of action of debt on specialties.—All actions of debt for rent upon an indenture of demise, all actions of covenant or debt upon any bond or other specialty, and all actions for debt or *scire facias* upon any recognizance, and also all actions of debt upon any award where the submission is not by specialty, or for any fine due in respect of any copyhold estates, or for an escape, or for money levied on any *fiery facias*, and all actions for penalties, damages, or sums of money given to the party aggrieved, by any Statute now or hereafter to be in force, that shall be sued or brought at any time, shall be commenced and sued within the time and limitation hereinafter expressed, and not after:

That is to say, the said actions of debt for rent upon an indenture of demise, or covenant or debt upon any bond or other specialty, actions of debt or *scire facias* upon recognizance, within twenty years after the cause of such actions or suits, but not after; the said actions by the party aggrieved, within two years after the cause of such actions or suits, but not after; and the said other actions, within six years after the cause of such actions or suits, but not after:

Provided that nothing herein contained shall extend to any action given by any Statute where the time for bringing such action is or shall be by any Statute specially limited. 3 and 4 Will. IV., c. 42, s. 3.

51. Infants and persons under disability.—If any person or persons that is or are or shall be entitled to any such action or suit, or to such *scire facias*, is or are or shall be, at the time of any such cause of action accrued, within the age of twenty-one years, *feme covert*, or *non compos mentis*, then such person or persons shall be at liberty to bring the same actions, so as they commence the same within such times after their coming to or being of full age, discover, of sound memory, or returned from beyond the seas, as other persons having no such impediment should according to the provisions of this Act, have done:

Absence of defendants beyond seas provided for.—And if any person or persons against whom there shall be any such cause of action is or are or shall be, at the time such cause of action accrued, beyond the seas, then the person or persons entitled to any such cause of action shall be at liberty to bring the same against such person or persons within such times as are before limited after the return of such person or persons from beyond the seas. 3 and 4 Will. IV., c. 42, s. 4; 19 and 20 Vict., c. 97, s. 10.

52. Proviso in case of acknowledgment in writing or by part payment.—Provided always, that if any acknowledgment shall have been made, either by writing signed by the party liable by virtue of such indenture, specialty, or recognizance, or

his agent, or by part payment or part satisfaction on account of any principal or interest being then due thereon, it shall and may be lawful for the person or persons entitled to such actions to bring his or their action for the money remaining unpaid and so acknowledged to be due within twenty years after such acknowledgment by writing or part payment or part satisfaction as aforesaid, or, in case the person or persons entitled to such action shall, at the time of such acknowledgment, be under such disability as aforesaid, or the party making such acknowledgment be, at the time of making the same, beyond the seas, then within twenty years after such disability shall have ceased as aforesaid, or the party shall have returned from beyond the seas, as the case may be; and the plaintiff or plaintiffs in any such action, on any indenture, specialty, recognizance, may, by way of replication, state such acknowledgment, and that such action was brought within the time aforesaid, in answer to a plea of this Statute. 3 and 4 Will. IV., c. 42, s. 5.

53. Part payment by one contractor not to prevent bar by statute in favour of another or others.—When there shall be two or more co-contractors or co-debtors, whether bound or liable jointly only or jointly and severally, or executors or administrators of any contractor, no such co-contractor or co-debtor, executor or administrator shall lose the benefit of the aforesaid provisions of this Act, or any of them, so as to be chargeable in respect or by reason only of payment of any principal, interest, or other money by any other or others of such co-contractors, co-debtors, executors, or administrators. 19 and 20 Vict., c. 97, s. 14.

54. The limitation after judgment.—And, nevertheless, if in any of the said actions judgment be given for the plaintiff, and the same be reversed by error or a verdict pass for the plaintiff, and upon matter alleged in arrest of judgment the judgment be given against the plaintiff, that he take nothing by his plaint, writ, or bill, the plaintiff, his executors or administrators, as the case shall require, may commence a new action or suit from time to time within a year after such judgment reversed, or such judgment given against the plaintiff, and not after. 3 and 4 Will. IV., c. 42, s. 6.

55. Period of limitation to run as to joint debtors in the jurisdiction, though some are beyond seas.—Where any such cause of action or suit, with respect to which the period of limitation is fixed by section 50 of this Act, lies against two or more joint debtors, the person or persons who shall be entitled to the same shall not be entitled to any time within which to commence and sue any such action or suit against any one or more of such joint debtors who shall not be beyond the seas at the time such cause of action or suit accrued, by reason only that some other one or more of such joint debtors was or were at the time such cause of action accrued beyond the seas, and such person or persons so entitled as aforesaid shall not be barred from commencing and suing any action or suit against the joint debtor or joint debtors who was or were beyond seas at the time the cause of action or suit accrued, after his or their return from beyond seas, by reason only that judgment was already recovered against any one or more of such joint debtors who was or were not beyond the seas at the time aforesaid. 19 and 20 Vict., c. 97, s. 11.

PART IV.

THE LIMITATION OF CERTAIN CAUSES OF ACTION ARISING ABROAD.

Defence of Foreign Limitation.

56. Foreign Statutes of Limitations to be a sufficient defence in certain cases.—In case any action shall be instituted in this Province against any person here resident, in respect of a cause of action or suit which has arisen between such person and some other person in a foreign country, wherein the person so sued shall have been resident at the time when such cause of action or suit shall have first arisen, such action shall not be maintained in any Court of Civil Jurisdiction in this Province if the remedy thereon in such foreign country is barred by any statute or enactment for the limitation of actions existing in such foreign country. C. A. 1888, c. 75, s. 2.

57. Form of plea.—Any defendant may obtain the benefit of the foregoing enactment by a defence in the form following:—

"And in answer to the whole, or any particular paragraph of the statement of claim, the defendant _____, says that the cause of action is barred by the law of [name of the country], in which country the said cause of action first arose."

Provided he shall give evidence of the expiration of the period of limitation prescribed by the foreign law pleaded. C. A. 1888, c. 75, s. 3.

58. Printed copy to be "prima facie" evidence.—Any printed copy, purporting to be an authorised copy of any such statute or enactment, shall be *prima facie* evidence of the statute or enactment of which it purports to be an authorised copy. C. A. 1888, c. 75, s. 4.

NORTHWEST TERRITORIES, SASKATCHEWAN AND ALBERTA.

NORTHWEST TERRITORIES, SASKATCHEWAN AND ALBERTA.

C. O., N. W. T., 1898, CHAP. 31.

AN ORDINANCE RESPECTING LIMITATION OF ACTIONS IN CERTAIN CASES.

The Lieutenant Governor, by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

1. Actions on simple contracts.—All actions for recovery of merchant's accounts, bills, notes and all actions of debt grounded upon any lending or other contract without specialty shall be commenced within six years after the cause of such action arose. C. O. 31, s. 1.

2. "The Real Property Limitation Act" (Imp.) in force.—The provisions of *The Real Property Limitation Act 1874*, being chapter 57 of the Statutes of the Imperial Parliament, passed in the thirty-seventh and thirty-eighth years of her Majesty's reign, are hereby

declared to be in force and to have been in force in the Territories since the passing thereof. C. O. 31, s. 2.

3. Title by prescription, etc.—No right to the access and use of light or any other easement, right in gross or profit *a prendre* shall be acquired by any person by prescription and no such right shall be deemed to have been so acquired prior to the coming into force of this Ordinance. 1903, Sess. 2, c. 7, s. 1.

MANITOBA.

R. S. M., 1902, CHAP. 100.

AN ACT RESPECTING THE LIMITATION OF SUITS RELATING TO REAL PROPERTY, AND THE TIMES OF PRESCRIPTION IN CERTAIN CASES.

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Preamble.—Whereas it is expedient to lessen the time for making entries and for bringing actions and suits to recover land and rent in certain cases, and also to lessen the time for redemption by mortgagors, and for the recovery of dower and of money charged on land or on rent secured by express trust and in respect to other matters, according to the provisions hereinafter contained; R. S. M., c. 89, Preamble.

Now, therefore, His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

SHORT TITLE.

1. Short title.—This Act may be cited as “The Real Property Limitation Act.” R. S. M., c. 89, s. 1.

INTERPRETATION.

2. Interpretation.—The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act excludes such construction, be interpreted as follows, that is to say:—

(a) “**Land.**”—The expression “land” shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the said hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency.

(b) “**Assurance.**”—The expression “assurance” means any deed or instrument, other than a will, by which any land may be conveyed or transferred at law or in equity;

(c) “**Rent.**”—The expression “rent” shall extend to all annuities and periodical sums of money charged upon or payable out of any land;

(d) “**Heir**” or “**heirs.**”—The expression “heir” and “heirs.” as respects any real estate devised by any testator, dying after the seventh day of July in the year one thousand eight hundred and eighty-three, shall extend respectively to the heirs of such testator or of any other person, and, where no contrary or other intention is signified by the will, shall be construed to mean the person or

persons to whom such real estate would descend under the law in force in this Province in case of intestacy. R. S. M., c. 89, s. 2.

3. When this Act came into force.—This Act commenced and took effect on, from and after the first day of January in the year one thousand eight hundred and eighty-five, except as provided by chapter sixteen of the Acts passed in the fifty-seventh year of the reign of Her late Majesty. R. S. M., c. 89, s. 3, *part*.

LAND OR RENT.

4. Action to recover land or rent limited to ten years.—

No person shall make any entry or distress, or bring any action or suit to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action or suit, first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, than within ten years next after the time at which the right to make such entry or distress, or to bring such action or suit, first accrued to the person making or bringing the same. R. S. M., c. 89, s. 4.

5. Time at which right to recover land or rent first accrued.—In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned;

(a) **Time of dispossession, etc., to be considered time when right first accrued.**—Where the person claiming such land or rent, or some person through whom he claims has, in respect of the estate or interest claimed, been in possession or in the receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;

(b) **Heirs' right first accrued at death of person from whom he inherits.**—When a person claiming such land or rent claims the estate or interest of some deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death;

(c) **If right arises otherwise than by will, the time when claimant was entitled thereby to possess is time when right first accrued.**—When the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by any instrument other than a will, to him or some person through whom he claims, by a person being, in respect of the same estate or interest, in possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument has been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming, as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument;

(d) **When land is leased by person having no claim thereon, the lawful owner's right first accrues from first payment**

under said lease.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, by virtue of a lease in writing by which a rent amounting to the yearly sum of four dollars or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

(e) When land is rented without written lease, lawful claimant's right first accrued at end of first period of such lease, or when any rent due thereon was last received.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened;

(f) When land is held by tenant at will, lawful claimant's right first accrued at end of tenancy or one year after commencement.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued, either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined;

(g) Mortgagor, &c., not to be deemed as tenant at will.—No mortgagor or *cestui que trust* shall be deemed to be a tenant at will, within the meaning of the next preceding sub-section, to his mortgagee or trustee.

(h) When claimant's right arises from forfeiture, &c., it first accrued when such first occurred.—Where the person claiming such land or rent, or the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken;

(i) When the right arises from forfeiture which has not been pressed, then it shall be deemed to have first accrued when same became estate in possession.—Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued in re-

spect of such estate or interest at the time when the same became an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

(j) **Right to estate in reversion first accrued when same became estate in possession.**—Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession;

(k) **Right to estate in reversion first accrued when same became estate in possession by determination of estate by which it was held.**—A right to make an entry or a distress, or to bring an action or a suit to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same became an estate or interest in possession by the determination of any estate or estates in respect of which such land has been held, or the profits thereof or such rent have been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have determined, been in the possession or receipt of the profits of such land, or in receipt of such rent. R. S. M., c. 89, s. 5.

6. **When any person has not received profits or rent of land before his estate therein ceased, then person having estate in possession can make entry, &c., therefor within ten years former has right thereto or five years after latter became vested in possession.**—If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession, or receipt of the profits, of such land or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought, by any person becoming entitled in possession to a future estate or interest but within ten years next after the time when the right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of these two periods is the longer. R. S. M., c. 89, s. 6.

7. **If right has been barred under this Act, no person afterwards can make entry, &c., therefor.**—If the right of any such person to make such entry or distress, or to bring any such action or suit, as was referred to in the last preceding section, has been barred under this Act, no person afterwards claiming to be entitled to the same land or rent, in respect of any subsequent estate or interest, under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit to recover such land or rent. R. S. M., c. 89, s. 7.

8. **When right has been barred by period herein, no ac-**

tion unless said land, &c., has been recovered in meantime.—Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period hereinbefore limited, which is applicable in such case, and such person has, at any time during the said period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited, or taken effect after or in defeasance of such estate or interest in possession. R. S. M., c. 89, s. 8.

9. When administrator claims, the time between his appointment and death of person not to be counted.—For the purpose of this Act, an administrator claiming the estate or interest of a deceased person, of whose chattels or estate and effects he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. R. S. M., c. 89, s. 9.

10. Entry not sufficient evidence of possession.—No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon. R. S. M., c. 89, s. 10.

11. Continual claim not to preserve right of entry, &c.—No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. R. S. M., c. 89, s. 11.

12. No future descent, &c., to defeat right.—No descent cast, discontinuance or warranty, happening or made hereafter or since the seventh day of July in the year one thousand eight hundred and eighty-three, shall toll or defeat any right of entry or action for the recovery of land. R. S. M., c. 89, s. 12.

13. Receipt of co-tenant who received more than proper share not to be deemed receipt of person entitled thereto.—Where any one or more of several persons entitled to any land or rent as co-parceners, joint tenants or tenants in common or *cestuis que trustent* have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. R. S. M., c. 89, s. 13.

14. Possession or receipt of a relative not to be deemed the possession or right of the heirs.—Where a relative of the persons entitled, as heirs, to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R. S. M., c. 89, s. 14.

15. The right to claim first accrued when the last written acknowledgment of title was given.—Where any acknowledgment of the title of the person entitled to any land or rent has been given to him or to his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. R. S. M., c. 89, s. 15.

16. Receipt for rent to be deemed receipt of profits of land.—The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. R. S. M., c. 89, s. 16.

17. Determination of period herein to extinguish right to land or rent.—At the determination of the period limited by this Act to any person for making any entry or distress, or bringing any action or suit, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, action or suit respectively might have been made or brought within such period, shall be extinguished. R. S. M., c. 89, s. 17.

ARREARS OF RENT AND INTEREST.

18. Arrears of rent or interest not recoverable after six years.—No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, action or suit, but within six years next after the same respectively has become due, or next after any acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. R. S. M., c. 89, s. 18.

19. Prior mortgagee having possession of land or rent within one year before subsequent mortgagee brings action not to hinder latter from recovering.—Where any prior mortgagee or other incumbrancer has been in possession of any land, or in receipt of the profits thereof, within one year next before an action or suit is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action or suit the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years. R. S. M., c. 89, s. 19.

MORTGAGES.

20. Mortgagor's right to redeem ceases ten days after mortgage obtains possession, &c., or ten years after said

mortgagee's last written acknowledgment of mortgagor's title.—When a mortgagee has obtained the possession or receipt of the profits of any land or the receipt of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action or suit to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee or the person claiming through him; and in such case no such action or suit shall be brought, but within ten years next after the time at which such acknowledgment, or the last of such acknowledgments if more than one, was given. R. S. M., c. 89, s. 20.

21. Mortgagee's acknowledgment to one mortgagor as effectual as if to all.—In case there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors, or persons. R. S. M., c. 89, s. 21.

22. The acknowledgment of one or more mortgagees to be effectual only as against persons signing, and shall not give mortgagor right to redeem as against other mortgagors.—In case there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from or under him or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent, on payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. R. S. M., c. 89, s. 22.

23. Mortgagor may redeem mortgage within ten years after last payment of principal or interest.—Any person entitled to, or claiming under, a mortgage of land may make an entry, or bring an action at law or suit in equity to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than ten years have elapsed since the time at which the right to make such entry, or bring such action or suit, first accrued. R. S. M., c. 89, s. 23.

24. No action to recover money secured by mortgage, &c., after ten years after right to the same accrued, or ten years

after last payment of principal or interest, or the last acknowledgment thereof, has been made or given.—No action or suit or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent, at law or in equity, or any legacy, but within ten years next after the present right to receive the same accrued to some person capable of giving a discharge for or release of the same, unless in the meantime, some part of the principal money or some interest thereon has been paid, or some acknowledgment of the right thereon has been given in writing signed by the person by whom the same is payable, or his agent, to the person entitled thereto or his agent; and in such case no action, suit or proceeding shall be brought, but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgments if more than one, was made or given. R. S. M., c. 89, s. 24.

25. Money secured by an express trust recoverable only as if no trust.—No action, suit or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable out of any land or rent, at law or in equity, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. R. S. M., c. 89, s. 25.

BAR OF ESTATES TAIL.

26. Right of tenant in tail barred by lapse of period herein cannot be renewed.—Where the right of a tenant in tail of any land or rent to make an entry or distress, or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. R. S. M., c. 89, s. 26.

27. Death of said tenant before lapse of said period not to prolong period.—Where a tenant in tail of any land or rent, entitled to recover the same, has died before the expiration of the period limited by this Act, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. R. S. M., c. 89, s. 27.

28. Assurance made by said tenant to hold as against any claim after or in defeasance of the estate tail, if said assurance has continued during period herein.—Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of such assurance, at the time of the execution thereof or at any time afterwards, in possession or receipt of the profits of such land or in the receipt of such rent, and the same person or any other persons who-soever, other than some person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail, continues or is in such possession or receipt for the

period of ten years next after the commencement of the time at which such assurance, if it had been executed by such tenant in tail or the person who would have been entitled to his estate if such assurance had not been executed would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of ten years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest or right to take effect, after or in defeasance of such estate tail. R. S. M., c. 89, s. 28.

LIMITATION OF SUITS IN EQUITY.

29. No claim to land or rent in equity after period herein.—No person claiming any land or rent in equity shall bring any suit to recover the same but within the period during which, by virtue of the provisions hereinbefore contained, he might have made an entry or distress or brought an action to recover the same, respectively, if he had been entitled at law to such estate, interest or right in or to the same, as he claims therein in equity. R. S. M., c. 89, s. 29.

30. Right of "cestui que trust" to recover first accrued when trust estate was conveyed to purchaser.—Said right only as against purchaser.—Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land or rent shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him. R. S. M., c. 89, s. 30.

31. In case of concealed fraud, right to recover first accrued when fraud could have been known.—In every case of a concealed fraud, the right of any person to bring suit in equity for the recovery of any land or rent which he or any person through whom he claims may have been deprived of by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was, or with reasonable diligence might have been, first known or discovered. R. S. M., c. 89, s. 31.

32. Last section not to apply against "bona fide" purchaser ignorant of said fraud.—Nothing in the last preceding section contained shall enable any owner of lands or rents to have a suit in equity for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud, against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed. R. S. M., c. 89, s. 32.

33. Act not to interfere with Courts of equity in certain matters.—Nothing in this Act contained shall be deemed to interfere with any rule or jurisdiction of courts of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit is not barred by virtue of this Act. R. S. M., c. 89, s. 33.

PRESCRIPTION IN CASES OF EASEMENTS.

34. Access and use of light.—No person shall acquire a right by prescription to the access and use of light to any dwelling house, workshop or other building. R. S. M., c. 89, s. 34.

DISABILITIES AND EXCEPTIONS.

35. Lapse of period not to bar right of person under any disability therein mentioned.—Right to cease five years after removal of such disability.—If, at the time at which the right of any person to make an entry or distress, or to bring an action or a suit to recover any land or rent, first accrues, as aforesaid, such person is under any of the disabilities hereinafter mentioned, that is to say, infancy, idiocy, lunacy or unsoundness of mind, then such person or the person claiming through him, notwithstanding that the period of ten years or five years, as the case may be, hereinbefore limited has expired, may make an entry or distress, or bring an action or a suit to recover such land or rent, at any time within five years next after the time at which the person to whom such right first accrued ceased to be under the disability or died whichever of those two events first happened. R. S. M., c. 89, s. 35; 57 V., c. 16, s. 1.

36. Right of person under disability to cease after 25 years.—No entry, distress, action or suit shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action or suit to recover any land or rent, first accrued, was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty-five years next after the time at which said right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty-five years, or although the term of five years from the time at which he ceased to be under any such disability, or died, may not have expired. R. S. M., c. 89, s. 36; 57 V., c. 16, s. 2.

37. Death of person under disability not to lengthen period herein for any other person.—Where any person is under any of the disabilities hereinbefore mentioned at the time at which his right to make an entry or distress, or to bring an action to recover any lands or rent, first accrues, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued, or the said period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R. S. M., c. 89, s. 37.

ONTARIO.

R. S. O., 1897, CHAP. 324.

LIMITATION OF ACTIONS.

38. Limitation of actions.—The actions hereinafter mentioned shall be commenced within, and not after, the times respectively hereinafter mentioned, that is to say:

(1) **Slander.**—Actions upon the case for words, within two years after the words spoken.

(2) **Assault, etc.**—Actions for assault, battery, wounding, or imprisonment, or any of them, within four years after the cause of such actions arose.

(3) **Trespass, etc.**—Actions for trespass to goods or lands, debt grounded upon any lending or contract without specialty, debt for arrearages of rent, detinue, replevin, or upon the case other than for slander, within six years after the cause of such actions arose. 21 Jac. 1. c. 16. s. 3.

39. Infants, etc., may bring actions within the several periods after their disability ceases.—In case a person entitled to such action as aforesaid is, at the time the cause of action accrues, within the age of twenty-one years, or *non compos mentis*, then such person may bring the action within such time after coming to, or being of, full age, or of sound memory, as other persons having no such impediment should, according to the provisions of this Act, have done. 21 Jac. 1. c. 16. s. 7.

40. Persons out of Ontario.—If a person against whom any such cause of action as aforesaid accrued is, at such time, out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited, after the return of the absent person to Ontario. 4 and 5 Anne, c. 3 (or c. 16, in Ruffhead's Ed.), s. 19.

LIMITATION OF ACTIONS BY THE CROWN.

41. No entry by Crown after 60 years from time right accrued.—No entry, distress, or action, information, or other proceeding, shall hereafter be made, filed, or brought, on behalf of His Majesty, against any person for the recovery of, or respecting, any lands, tenements or hereditaments, or for, or concerning, any revenues, rents, issues or profits thereof, but within sixty years next after the right to make such entry, distress, or make, bring, or file, such action, information, or proceeding, shall have first accrued to His Majesty. (*See 9 Geo. 3, c. 16.*) 2 Ed. VII., c. 1, s. 17.

42. When right of entry to be deemed to have first accrued.—In the construction of this Act, the right to make an entry or distress, or bring, or file, or commence, an action, information, or other proceeding, shall be deemed to have first accrued as hereinafter mentioned.

(i.) **Land or rent.**—Where land or rent is claimed, if His Majesty shall have been in possession, or in receipt of, such land, or rent, and shall, while entitled thereto, have been dispossessed, or have discontinued such possession, or receipt, then such right shall be deemed to have first accrued at the time of such dispossession, or discontinuance of possession, or at the last time when such rents or profits were received.

(ii.) **Reversion or remainder.**—When the estate or interest claimed by His Majesty shall have been an estate or interest in reversion, or remainder, or other future estate or interest, and His Majesty shall not have obtained possession, or receipt of the profits of such land, or the receipt of such rent, such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession.

(iii.) **Forfeiture.**—When any right to make an entry, or distress, or to bring, file, or commence, an action, information, or other proceeding, to recover any land, or rent, by reason of any forfeiture or condition, shall have first accrued in respect of any estate or interest to which His Majesty is entitled in reversion, or remainder, and the land, or rent, shall not have been recovered by virtue of such

right, the right to make an entry, or distress, or bring an action to recover such land, or rent, by His Majesty, shall be deemed to have first accrued in respect of such estate or interest at the time when the same became an estate or interest in possession, as if no such forfeiture or breach of condition had happened.

(iv.) **Where acknowledgment is given.**—When any acknowledgment in writing of the title of His Majesty to any land, rent, revenues, rents, issues or profits, shall have been given to him or his agent, signed by the person in possession of, or in receipt of, such land, or the rents, issues or profits thereof, or liable to pay such revenue due to His Majesty, the right to make an entry, or distress, or bring, file, or commence, an action, information, or other proceeding, to recover any such land, rent, issues, profits, or revenue, as against the person giving such acknowledgment, or any person claiming under him, shall be deemed to have first accrued at, and not before, the time when such acknowledgment, or the last of such acknowledgments, if more than one, was given. (*See 9 Geo. 3, c. 16.*) 2 Ed. VII., c. 1, s. 18.

43. Waste lands excepted.—Sections 41 and 42 of this Act shall not apply to any waste lands of the Crown. 2 Ed. VII., c. 1, s. 19.

44. Sec. 2 of Rev. Stat. c. 133, to apply.—Section 2 of *The Real Property Limitations Act* shall extend to sections 41 and 42, so far as applicable. 2 Ed. VII., c. 1, s. 20.

R. S. O., 1897, CHAP. 72.

AN ACT RESPECTING THE LIMITATION OF CERTAIN ACTIONS.

Limitation of Actions—

For rent upon a demise	s. 1 (a)
On specialties	s. 1 (b)
On recognizances	s. 1 (c)
On awards	s. 1 (d)
For escape	s. 1 (e)
For money levied under execution	s. 1 (f)
For penalties, etc.	s. 1 (g)
Upon covenants in mortgages	s. 1 (h)
Of account or between merchants	s. 2
Disabilities	s. 3
No distinction between residents and non-residents	ss. 4, 5
Cases of actions against joint debtors	ss. 6, 7
Effect of acknowledgments	s. 8
Limitation in intestacy	s. 9

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Limitation of time for commencing particular actions.—(1) The actions hereinafter mentioned shall be commenced within and not after the times respectively hereinafter mentioned, that is to say:

(a) Actions for rent, upon an indenture of demise, R. S. O., 1887, c. 60, s. 1 (1a).

(b) Actions upon a bond, or other specialty, except upon the covenants contained in any indenture of mortgage made on or after

the 1st day of July, 1894. R. S. O., 1887, c. 60, s. 1 (1b); 56 V., c. 17, s. 1, part; 60 V., c. 3, s. 3.

(c) Actions upon a recognizance, within twenty years after the cause of such actions arose;

(d) Actions upon an award where the submission is not by specialty,

(e) Actions for an escape,

(f) Actions for money levied on execution, within six years after the cause of such actions arose;

(g) Actions for penalties, damages, or sums of money given to the Crown or the party aggrieved, by any statute, within two years after the cause of such actions arose; R. S. O., 1887, c. 60, s. 1. (1, c—g). (As amended by 1 Edw. VII., c. 12, s. 9.)

(h) Actions upon any covenant contained in any indenture of mortgage, made on or after the 1st day of July, 1894, within ten years after the cause of such actions arose. 56 V., c. 17, s. 1, part.

(i) Actions for penalties imposed by any statute brought by any informer suing for himself alone, or for the Crown as well as himself, or by any person authorized to sue for the same, not being the person aggrieved, within one year after the cause of such action arose. (Added by 4 Edw. VII., c. 10, s. 20.)

(2) **Where time specially limited.**—But nothing herein contained shall extend to any action given by any statute, when the time for bringing the action is by the statute specially limited. R. S. O., 1887, c. 60, s. 1 (2).

2. Actions of account, etc., to be commenced within six years.—All actions of account or for not accounting, or for such accounts as concern the trade of merchandise between merchant and merchant, their factors and servants, shall be commenced within six years after the cause of such actions arose; and no claim in respect of a matter which arose more than six years before the commencement of the action shall be enforceable by action by reason only of some other matter of claim comprised in the same account, having arisen within six years next before the commencement of the action. R. S. O., 1887, c. 60, s. 2.

3. In case of disability of plaintiff.—In case a person entitled to such action, as aforesaid, is at the time of the cause of action accruing within the age of twenty-one years, or *non compos mentis*, then such person may bring the action, within such time after coming to or being of full age, or of sound memory, as other persons having no such impediment should, according to the provisions of this Act, have done. R. S. O., 1887, c. 60, s. 3.

4. Non-resident Plaintiffs.—A plaintiff who is resident out of Ontario shall have no longer period of time to commence an action than if he were resident in Ontario when the cause of action or proceeding first accrued. R. S. O., 1887, c. 60, s. 4.

5. Non-resident defendants.—If a person against whom any such cause of action accrues, is at such time out of Ontario, the person entitled to the cause of action may bring the action within such times as are before limited after the return of the absent person to Ontario. R. S. O., 1887, c. 60, s. 5.

6. As to cases where some joint debtors have been within and some without Ontario.—Where a cause of action, with respect to which the period of limitation is fixed by the imperial Act of the 21st year of the Reign of King James the First, chapter 16, section 3, or by any Act now in force in Ontario, lies against joint

debtors, the person entitled to the same shall not be entitled to any time within which to commence such action against any one of the joint debtors who was within Ontario at the time the cause of action accrued, by reason only that some other of the joint debtors was, at the time the cause of action accrued out of Ontario. R. S. O., 1887, c. 60, s. 6.

7. Recovery against one joint debtor no bar to action against another who is absent.—The person so entitled shall not be barred from commencing an action against the joint debtor who was out of Ontario at the time the cause of action accrued, after his return to Ontario, by reason only that judgment has been already recovered against the joint debtor who was within Ontario at the time aforesaid. R. S. O., 1887, c. 60, s. 7.

8. Effect of written acknowledgment or part payment.—In case an acknowledgment in writing, signed by the principal party or his agent, is made by a person liable upon an indenture, specialty or recognizance, or in case an acknowledgment is made by such person by part payment, or part satisfaction, on account of any principal or interest due on such indenture, specialty or recognizance, the person entitled may bring an action for the money remaining unpaid and so acknowledged to be due, within twenty years, or in the cases mentioned in clause (h) of sub-section 1 of section 1 within ten years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person entitled is at the time of the acknowledgment under disability, as aforesaid, or the party making the acknowledgment is, at the time of making the same out of Ontario, then within twenty years, or in the cases aforesaid within ten years, after the disability has ceased, as aforesaid, or the party has returned, as the case may be. R. S. O., 1887, c. 60, s. 8; 60 V., c. 3, s. 3.

9. An action to recover personal estate of an intestate or any part thereof, must be brought within twenty years.—Imp. Act., 23 and 24 V., c. 38, s. 13.—No action or other proceeding shall be brought to recover the personal estate, or any share of the personal estate of a person dying intestate, possessed by the legal personal representative of such intestate, but within twenty years next after a present right to receive the same accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the estate or share, or some interest in respect thereof has been accounted for or paid, or some acknowledgment of the right thereto has been given in writing, signed by the person accountable for the same, or his agent, to the person entitled thereto, or his agent; and in such case, no action shall be brought but within twenty years after such accounting, payment or acknowledgment, or the last of such accountings, payments or acknowledgments, if more than one, was made or given. R. S. O., 1887, c. 60, s. 9.

R. S. O., 1897, CHAP. 133.

AN ACT RESPECTING THE LIMITATION OF ACTIONS RELATING TO REAL PROPERTY, AND THE TIME OF PRESCRIPTION IN CERTAIN CASES.

Short Title	s. 1
Interpretation	s. 2
Commencement of Act as to Absentees	s. 3
Period of Limitation—ten years after right of action accrued . .	s. 4

When rights of action deemed to have accrued:

On dispossession	s. 5 (1)
On death	s. 5 (2)
On alienation	s. 5 (3)
Wild lands	s. 5 (4)
Rent under lease	s. 5 (5)
Tenancy from year to year	s. 5 (6)
Tenancy at will	s. 5 (7, 8)
Forfeiture or breach of condition	s. 5 (9, 10)
Future estates	s. 5 (10-12)
Period of limitation as to certain future estates	s. 6
Administrator to claim from death of deceased	s. 7
Entry not to be deemed possession	s. 8
Continual claim not to preserve rights	s. 9
Descent cast, warranty, etc., not to bar right of entry or action.	s. 10
Possession of one joint tenant, etc., not to be deemed possession of another	s. 11
Possession of relations not to be deemed possession of the heirs,	s. 12
Acknowledgment to be equivalent to possession or receipt of rent,	s. 13
Receipt of rent to be deemed receipt of profits	s. 14
Right of party out of possession extinguished at the end of the period limited	s. 15
Actions for arrears of dower, rent and interest to be within six years	ss. 16-18
Mortgagor out of possession barred after ten years	s. 19
Acknowledgments	ss. 20-21
Mortgagee barred after ten years	s. 22
Actions for money charged on land and legacies	ss. 23, 24
Actions for dower	ss. 25, 26
Bar of estates tail	ss. 27-29
Limitation of equitable claims	ss. 30-33
Easements:	
Profits à prendre	s. 34
Rights of way, water and other easements	s. 35
Light	s. 36
Interruptions	s. 37
Pleadings in actions claiming easements, etc.	ss. 38-39
Disabilities in cases of.	ss. 40-42
Disabilities and exceptions:	
Easements	ss. 40-42
In cases of land or rent	ss. 43-45
Five years allowed from the termination of disability	s. 43
Twenty years the utmost allowance	s. 44
No further time for a succession of disabilities	s. 45
Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—	

1. Short title.—This Act may be cited as “*The Real Property Limitation Act.*” R. S. O., 1887, c. 111, s. 1.

2. Interpretation.—Where the following words occur in this Act they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:—

1. “Land.”—“Land” shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land (and to chattels and other personal property transmissible to heirs), and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate

transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency;

2. **"Assurance."**—"Assurance" shall mean any deed or instrument (other than a will) by which any land may be conveyed or transferred; and

3. **"Rent."**—"Rent" shall extend to all annuities and periodical sums of money charged upon or payable out of any land. R. S. O., 1887, c. 111, s. 2.

3. Commencement of Act., C. S. U. C., c. 88; 32 V., c. 7 sec. 22.—This Act shall commence and be deemed to have taken effect, and chapter 88 of the Consolidated Statutes of Upper Canada, and section 222 of the Act passed in the thirty-second year of Her Majesty's reign, and chaptered 7, to have been repealed, on and from the first day of July in the year of our Lord 1877, as respects any person who on and for twelve months continuously after the twenty-first day of December, 1874, resided without this Province, and is a person entitled to make an entry or distress or to bring an action to recover any land or rent; or so resident, is a mortgagor, or person entitled to redeem within the meaning of sections, 19, 20 or 21 of this Act; or so resident is a person entitled to, or claiming under a mortgage within the meaning of section 22; or so resident is a person entitled to bring an action, or other proceeding within the meaning of section 23; or so resident is a person entitled to an action or other proceeding within the meaning of section 24; or so resident is a person claiming an estate, interest or right, to take effect after or in defeasance of an estate tail within the meaning of section 29; or so resident is a person entitled to demand dower; and except as respects the persons, and in the cases, mentioned above in this section, this Act shall be deemed to have commenced and taken effect and the said Acts to have been repealed on and from the first day of July, 1876. R. S. O., 1887, c. 111, s. 3.

LAND OR RENT.

4. **No land or rent to be recovered, but within ten years after the right of action accrued.**—**Imp. Acts, 3-4 Wm. IV., c. 27, s. 2; 37-38 V., c. 57, s. 1.**—No person shall make an entry or distress, or bring any action to recover any land or rent, but within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to some person through whom he claims; or if such right did not accrue to any person through whom he claims, then within ten years next after the time at which the right to make such entry or distress, or to bring such action, first accrued to the person making or bringing the same. R. S. O., 1887, c. 111, s. 4.

5. **When the right shall be deemed to have first accrued.**—In the construction of this Act, the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned;

1. **On dispossession.** **Imp. Act, 3-4 W. IV., c. 27, s. 3.**—Where the person claiming such land or rent, or some person through whom he claims, has, in respect of the estate or interest claimed,

been in possession or in the receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received.

2. On death. Imp. Act, 3-4 W. IV., c. 27, s. 3.—Where the person claiming such land or rent claims the estate or interest of some deceased person who continued in such possession or receipt, in respect of the same estate or interest, until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death.

3. On alienation. Imp. Act, 3-4 W. IV., c. 27, s. 3.—Where the person claiming such land or rent claims in respect of an estate or interest in possession, granted, appointed or otherwise assured by any instrument other than a will, to him or some person through whom he claims, by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument has been in possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming, as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument.

4. As to lands not cultivated or improved.—Proviso.—In the case of lands granted by the Crown of which the grantee, his heirs or assigns, by themselves, their servants or agents, have not taken actual possession by residing upon or cultivating some portion thereof, and in case some other person not claiming to hold under such grantee has been in possession of such land, such possession having been taken while the land was in a state of nature, then unless it can be shewn that such grantee or such person claiming under him while entitled to the lands had knowledge of the same being in the actual possession of such other person, the lapse of ten years shall not bar the right of such grantee or any person claiming under him to bring an action for the recovery of such land, but the right to bring an action shall be deemed to have accrued from the time that such knowledge was obtained; but no such action shall be brought or entry made after twenty years from the time such possession was taken as aforesaid.

5. When right deemed to accrue where rent amounting to \$4 reserved by lease in writing has been wrongfully received. Imp. Act, 3-4 W. IV., c. 27, s. 9.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent by virtue of a lease in writing, by which a rent amounting to the yearly sum of \$4 or upwards is reserved, and the rent reserved by such lease has been received by some person wrongfully claiming to be entitled to such land or rent in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease has afterwards been made to the person rightfully entitled thereto, the right of the person entitled to such land or rent, subject to such lease, or of the person through whom he claims to make an entry or distress, or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrong-

fully claiming as aforesaid, and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled.

6. No person after a tenancy from year to year to have any right, but from the end of the first year or last payment of rent. Imp. Act, 3-4 W. IV., c. 27, s. 8.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant from year to year or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years or other periods, or at the last time when any rent payable in respect of such tenancy was received, whichever last happened.

7. In the case a tenant at will, the right shall be deemed to have accrued at the end of one year. Imp. Act, 3-4 W. IV., c. 27, s. 7.—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent, as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined.

8. Case of mortgagor or "cestui que trust."—No mortgagor or *cestui que trust* shall be deemed to be a tenant at will within the meaning of the next preceding subsection to his mortgagee or trustee.

9. In case of forfeiture or breach of condition. Imp. Act, 3-4 W. IV., c. 27, s. 3.—Where the person claiming such land or rent, or the person through whom he claims, has become entitled, by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred or such condition broken.

10. Where advantage of forfeiture is not taken by remainderman, he shall have a new right when his estate comes into possession. Imp. Act, 3-4 W. IV., c. 27, s. 4.—Where any right to make an entry or distress, or to bring an action to recover any land or rent, by reason of any forfeiture or breach of condition, has first accrued in respect of any estate or interest in reversion or remainder, and the land or rent has not been recovered by virtue of such right, the right to make an entry or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued in respect of such estate or interest in possession as if no such forfeiture or breach of condition had happened.

11. In case of forfeiture estates. Imp. Act, 3-4 W. IV., c. 27, s. 3.—Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent, in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became and estate or interest in possession.

12. Further provision for case of future estates. Imp. Act, 3-4 W. IV., c. 27, s. 5. 37-38 V., c. 57, s. 2.—A right to make an entry or a distress, or to bring an action to recover any land or rent, shall be deemed to have first accrued, in respect of an estate or interest in reversion or remainder, or other future estate or interest, at the time at which the same became an estate or interest in possession, by the determination of any estate or estates in respect of which such land has been held or the profits thereof or such rent have been received, notwithstanding that the person claiming such land or rent, or some person through whom he claims, has, at any time previously to the creation of the estate or estates which have determined, been in the possession or receipt of the profits of such land, or in receipt of such rent. R. S. O., 1887, c. 111, s. 5.

6. Time limited as to future estates when person entitled to the particular estate out of possession, etc. Imp. Act, 37-38 V., c. 57, s. 2.—(1) If the person last entitled to any particular estate on which any future estate or interest was expectant has not been in the possession or receipt of the profits of such land, or in receipt of such rent, at the time when his interest determined, no such entry or distress shall be made, and no such action shall be brought by any person becoming entitled in possession to a future estate or interest, but within ten years next after the time when the right to make an entry or distress, or to bring an action for the recovery of such land or rent, first accrued to the person whose interest has so determined, or within five years next after the time when the estate of the person becoming entitled in possession has become vested in possession, whichever of those two periods is the longer.

(2) **The case of bar of future estate and of a subsequent interest created after right of entry, etc., accrued to owner of particular estate. Imp. Act, 37-38 V., c. 57, s. 2.**—If the right of any such person to make such entry or distress, or to bring any such action, has been barred under this Act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will or settlement executed or taking effect after the time when a right to make an entry or distress, or to bring an action for the recovery of such land or rent, first accrued to the owner of the particular estate whose interest has so determined as aforesaid, shall make any such entry or distress, or bring any such action, to recover such land or rent.

(3) **When the right to an estate in possession is barred, the right of the same persons to future estates shall also be barred. Imp. Act, 3-4 W. IV., c. 27, s. 20.**—Where the right of any person to make an entry or distress, or to bring an action to recover any land or rent to which he has been entitled for an estate or interest in possession, has been barred by the determination of the period, hereinbefore limited, which is applicable in such case, and such person has, at any time during the said period, been entitled to any other estate, interest, right or possibility, in reversion, remainder or otherwise, in or to the same land or rent, no entry, distress or action shall be made or brought by such person, or any person claiming through him, to recover such land or rent in respect of such other estate, interest, right or possibility, unless in the meantime such land or rent has been recovered by some person entitled to an estate, interest or right which has been limited

or taken effect after or in defeasance of such estate or interest in possession. R. S. O., 1887, c. 111, s. 6.

7. An administrator to claim as if he obtained the estate without interval after death of deceased. Imp. Act, 3-4 W. IV., c. 27, s. 6.—For the purposes of this Act, an administrator claiming the estate or interest of the deceased person of whose chattels he has been appointed administrator, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. R. S. O., 1887, c. 111, s. 7.

8. A mere entry not to be deemed possession. “Idem” s. 10.—No person shall be deemed to have been in possession of any land within the meaning of this Act, merely by reason of having made an entry thereon. R. S. O., 1887, c. 111, s. 8.

9. No right to be preserved by continual claim. “Idem” s. 11.—No continual or other claim upon or near any land shall preserve any right of making an entry or distress, or of bringing an action. R. S. O., 1887, c. 111, s. 9.

10. No descent, warranty, etc., to bar a right of entry or action. “Idem” s. 39.—No descent cast, discontinuance or warranty, which has happened or been made since the first day of July, 1834, or which may hereafter happen or be made, shall toll or defeat any right of entry or action for the recovery of land. R. S. O., 1887, c. 111, s. 10.

11. Possession of one coparcener, etc., not to be the possession of the others. Imp. Act, 3-4 W. IV., c. 27, s. 12.—Where any one or more of several persons entitled to any land or rent as coparceners, joint tenants or tenants in common have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. R. S. O., 1887, c. 111, s. 11.

12. Possession of relations not to be the possession of the heirs. “Idem” s. 13.—Where a relation of the persons entitled, as heirs, to the possession, or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs. R. S. O., 1887, c. 111, s. 12.

13. Acknowledgment in writing given to the person entitled or his agent, to be equivalent to possession or receipt of rent. Imp. Act, 3-4 W. IV., c. 27, s. 14.—Where any acknowledgment of the title of the person entitled to any land or rent has been given to him or to his agent in writing, signed by the person in possession or in receipt of the profits of such land, or in the receipt of such rent, such possession or receipt of or by the person by whom such acknowledgment was given shall be deemed, according to the meaning of this Act, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgment was given at the time of giving the same, and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress or bring an action to

recover such land or rent, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. R. S. O., 1887, c. 111, s. 13.

14. Receipt of rent to be deemed receipt of profits. *Imp. Act, 3-4 W. IV., c. 27, s. 35.*—The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Act. R. S. O., 1887, c. 111, s. 14.

15. At the end of the period of limitation the right of the party out of possession to be extinguished. *Imp. Act, 3-4 W. IV., c. 27, s. 34.*—At the determination of the period limited by this Act to any person for making an entry or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, or action respectively might have been made or brought within such period shall be extinguished. R. S. O., 1887, c. 111, s. 15.

ARREARS OF DOWER, RENT, AND INTEREST.

16. No arrears of dower to be recovered for more than six years. *"Idem" s. 41.*—No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action for a longer period than six years next before the commencement of such action. R. S. O., 1887, c. 111, s. 16.

17. No arrears of rent or interest to be recovered for more than six years. *Imp. Act, 3-4 W. IV., c. 27, s. 42.*—No arrears of rent, or of interest in respect of any sum of money charged upon or payable out of any land or rent, or in respect of any legacy, or any damages in respect of such arrears of rent or interest, shall be recovered by any distress, or action, but within six years next after the same respectively has become due, or next after any acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. R. S. O., 1887, c. 111, s. 17.

18. Exception in favour of subsequent mortgagee when a prior mortgagee has been in possession. *"Idem" s. 42.*—Where any prior mortgagee or other incumbrancer has been in possession of any land, or in the receipt of the profits thereof, within one year next before an action is brought by any person entitled to a subsequent mortgage or other incumbrance on the same land, the person entitled to such subsequent mortgage or incumbrance may recover in such action the arrears of interest which have become due during the whole time that such prior mortgagee or incumbrancer was in such possession or receipt as aforesaid, although such time may have exceeded the said term of six years. R. S. O., 1887, c. 111, s. 18.

MORTGAGES AND CHARGES ON LAND.

19. Mortgagor to be barred at end of ten years from the time when the mortgagee took possession, or from the last written acknowledgment. *Imp. Acts, 3-4 W. IV., c. 27, s. 28; and 37-38 V., c. 57, s. 7.*—Where a mortgagee has obtained the possession or receipt of the profits of any land or the receipt

of any rent comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring any action to redeem the mortgage, but within ten years next after the time at which the mortgagee obtained such possession or receipt unless in the meantime an acknowledgment in writing of the title of the mortgagor, or of his right to redemption, has been given to the mortgagor or some person claiming his estate, or to the agent of such mortgagor or person, signed by the mortgagee, or the person claiming through him; and in such case no such action shall be brought, but within ten years next after the time at which such acknowledgment or the last of such acknowledgment, if given to any of such given. R. S. O., 1887, c. 111, s. 19.

20. Acknowledgment to one of several mortgagors. Imp. Act, 3-4 W. IV., c. 27, s. 28.—In case there are more mortgagors than one, or more persons than one claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons. R. S. O., 1887, c. 111, s. 20.

21. Acknowledgment by one of several mortgagees. Imp. Act, 3-4 W. IV., c. 27, s. 28.—In case there are more mortgagees than one, or more persons than one claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land or rent by, from, or under him, or them, and any person or persons entitled to any estate or estates, interest or interests, to take effect after or in defeasance of his or their estate or estates, interest or interests, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person or persons entitled to any other undivided or divided part of the money or land or rent; and where such of the mortgagees or persons aforesaid as have given such acknowledgment are entitled to a divided part of the land or rent comprised in the mortgage or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land or rent on payment, with interest, of the part of the mortgage money which bears the same proportion to the whole of the mortgage money as the value of such divided part of the land or rent bears to the value of the whole of the land or rent comprised in the mortgage. R. S. O., 1887, c. 111, s. 21.

22. Mortgagee may enter or sue within ten years from last payment. Imp. Act, 7 W. IV., and 1 V., c. 28.—Any person entitled to or claiming under a mortgage of land, may make an entry or bring an action to recover such land, at any time within ten years next after the last payment of any part of the principal money or interest secured by such mortgage, although more than ten years have elapsed since the time at which the right to make such entry or bring such action first accrued. R. S. O., 1887, c. 111, s. 22.

23. Money charged upon land and legacies to be deemed satisfied at the end of ten years, if no interest paid or acknowledgment given in writing in the meantime.—Imp. Acts, 3-4 W. IV., c. 27, s. 40; and 37-38 V., c. 57, s. 8.—No action or other proceeding shall be brought to recover out of any land or

rent any sum of money secured by any mortgage or lien, or otherwise charged upon or payable out of such land or rent, or to recover any legacy, but within ten years next after a present right to receive the same accrued to some person capable of giving a discharge for, or release of the same, unless in the meantime some part of the principal money, or some interest thereon, has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person by whom the same is payable, or his agent, or to the person entitled thereto or his agent; and in such case no action or proceeding shall be brought, but within ten years after such payment or acknowledgment, or the last of such payments or acknowledgment, if more than one was made or given and unless in the meantime where a lien or charge has been created by the placing of a writ of execution against lands in the hands of the sheriff the writ has been kept alive by renewals of it from time to time. R. S. O., 1887, c. 111, s. 23. (As amended by 5 Edw. VII., c. 13, s. 10.)

24. Time for recovering charges and arrears of interest not to be enlarged by express trusts for raising the same.

Imp. Act, 37-38 V., c. 57, s. 10.—No action, or other proceeding shall be brought to recover any sum of money or legacy charged upon or payable, out of any land or rent, and secured by an express trust, or to recover any arrears of rent or of interest in respect of any sum of money or legacy so charged or payable and so secured, or any damages in respect of such arrears, except within the time within which the same would be recoverable if there were not any such trust. R. S. O., 1887, c. 111, s. 24.

DOWER.

25. Action of dower to be brought within ten years.—

No action of dower shall be brought but within ten years from the death of the husband of the dowress, notwithstanding any disability of the dowress or of any person claiming under her. R. S. O., 1887, c. 111, s. 25.

26. Time from which right to bring action of dower to be computed.—Where a dowress has, after the death of her husband, actual possession of the land of which she is dowable, either alone or with heirs or devisees of her husband, the period of ten years within which her action of dower is to be brought shall be computed from the time when such possession of the dowress ceased. This section shall not apply to any case in which the right of action ceased before the 5th day of March, 1880. R. S. O., 1887, c. 111, s. 26.

BAR OF ESTATES TAIL.

27. Where period of limitation elapsed against a tenant in tail to be deemed to have elapsed against those whose rights he could have barred. **Imp. Act, 3-4 W. IV., c. 27, s.**

Where the right of a tenant in tail of any land or rent to make an entry or distress or to bring an action to recover the same, has been barred by reason of the same not having been made or brought within the period limited by this Act, no such entry, distress or action shall be made or brought by any person claiming any estate, interest or right which such tenant in tail might lawfully have barred. R. S. O., 1887, c. 111, s. 27.

28. Term elapsed in such cases during the life of the tenant to be computed against those whose rights he could have barred. Imp. Act, 3-4 W. IV., c. 27, s. 22.—Where a tenant in tail of any land or rent entitled to recover the same has died before the expiration of the period limited by this Act, no person claiming any estate, interest or right which such tenant in tail might lawfully have barred, shall make an entry or distress or bring an action to recover such land or rent, but within the period during which, if such tenant in tail had so long continued to live, he might have made such entry or distress or brought such action. R. S. O., 1887, c. 111, s. 28.

29. In case of possession under an assurance by a tenant in tail, which does not bar the remainders, they shall be barred at the end of ten years after the period at which the assurance, if then executed, would have barred them. Imp. Acts, 3-4 W. IV., c. 27, s. 23; and 37-38 V., c. 57, s. 6.—Where a tenant in tail of any land or rent has made an assurance thereof, which does not operate to bar the estate or estates to take effect after or in defeasance of his estate tail, and any person is by virtue of such assurance, at the time of the execution thereof, or at any time afterwards, in possession or receipt of the profits of such land, or in the receipt of such rent, and the same person or any other person whosoever (other than some person entitled to such possession or receipt in respect of an estate which has taken effect after or in defeasance of the estate tail continues or is in such possession or receipt for the period of ten years next after the commencement of the time at which such assurance, if it had then been executed by such tenant in tail, or the person who would have been entitled to his estate tail if such assurance had not been executed, would, without the consent of any other person, have operated to bar such estate or estates as aforesaid, then, at the expiration of such period of ten years, such assurance shall be and be deemed to have been effectual as against any person claiming any estate, interest, or right to take effect after or in defeasance of such estate tail. R. S. O., 1887, c. 111, s. 29.

EQUITABLE CLAIMS.

30. In case of express trust, the right shall not be deemed to have accrued until a conveyance to a purchaser. Imp. Act, 3-4 W. IV., c. 27, s. 25.—(1) Where any land or rent is vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him to bring an action against the trustee or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Act, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser and any person claiming through him.

(2) **Claim of "cestui que trust" against trustee.** Rev. Stat. c. 129.—Subject to the provisions of Section 32 of *The Trustee Act*, no claim of a *cestui que trust* against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations. R. S. O., 1887, c. 111, s. 30.

31. In cases of fraud no time shall run whilst the fraud remains concealed. Imp. Act, 3-4 W. IV., c. 27, s. 26.—

In every case of a concealed fraud, the right of any person to bring an action for the recovery of any land or rent of which he or any person through whom he claims may have been deprived by such fraud shall be deemed to have first accrued at and not before the time at which such fraud was or with reasonable diligence might have been first known or discovered. R. S. O., 1887, c. 111, s. 31.

32. Unless in the case of "bona fide" purchaser for value without notice. Imp. Act, 3-4 W. IV., c. 27, s. 26.—Nothing in the last preceding section contained shall enable any owner of lands or rents to bring an action for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents, on account of fraud against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who, at the time that he made the purchase did not know, and had no reason to believe that any such fraud had been committed. R. S. O., 1887, c. 111, s. 32.

33. Right to refuse relief on the ground of acquiescence or otherwise. Imp. Act, 3-4 W. IV., c. 27, s. 27.—Nothing in this Act contained shall be deemed to interfere with any rule of Equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Act. R. S. O., 1887, c. 111, s. 33.

PREScription IN CASES OF EASEMENTS.

34. Certain claims not to be defeated by shewing only that the same enjoyed for less than 30 years. Imp. Act, 2-3 W. IV., c. 71, s. 1.—Indefeasible if enjoyed over 60 years.—No claim which may be lawfully made at the Common Law, by custom, prescription or grant, to any profit or benefit to be taken or enjoyed from or upon any land of our Sovereign Lady the Queen, Her Heirs or Successors, or of any ecclesiastical or lay person or body corporate, except such matters or things as are hereinafter specially provided for, and except rent, and services, shall, where such profit or benefit has been actually taken and enjoyed by any person claiming right thereto, without interruption for the full period of thirty years, be defeated or destroyed by shewing only that such profit or benefit was first taken or enjoyed at any time prior to such period of thirty years, but nevertheless such claim may be defeated in any other way by which the same is now liable to be defeated; and when such profit or benefit has been so taken and enjoyed as aforesaid for the full period of sixty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was taken and enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing. R. S. O., 1887, c. 111, s. 34.

35. Right of way, or water not to be defeated by shewing only that it began more than 20 years prior. Imp. Act, 2-3 W. IV., c. 71, s. 2.—Indefeasible if enjoyed over 40 years.—No claim which may lawfully be made at the Common Law by custom, prescription or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed, or derived upon, over, or from any land or water of our said Lady the Queen, Her Heirs or Successors, or being the property of any ecclesiastical or lay person or body corporate, when such way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period

of twenty years shall be defeated or destroyed by shewing only that such way or other matter was first enjoyed at any time prior to the period of twenty years, but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated, and where such way or other matter as herein last before mentioned has been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing. R. S. O., 1887, c. 111, s. 35.

36. Right to access and use of light by prescription abolished.—No person shall acquire a right by prescription to the access and use of light to or for any dwelling-house, workshop or other building; but this section shall not apply to any such right which has been acquired by twenty years' use before the fifth day of March, 1880. R. S. O., 1887, c. 111, s. 36.

37. How the periods shall be calculated, and what acts only shall be an interruption to the prescription. Imp. Act, 2-3 W. IV., c. 71, s. 4.—Each of the respective periods of years in the last preceding three sections mentioned shall be deemed and taken to be the period next before some action wherein the claim or matter to which such period relates was or is brought into question; and no act or other matter shall be deemed an interruption within the meaning of the said three sections, unless the same has, been submitted to or acquiesced in for one year after the party interrupted has had notice thereof, and of the person making or authorizing the same to be made. R. S. O., 1887, c. 111, s. 37.

38. What allegation by the party claiming shall be sufficient. Imp. Act, 2-3 W. IV., c. 71, s. 5.—(1) In all pleadings wherein the party claiming may now allege his right generally, without averring the existence of such right from time immemorial, such general allegation shall still be deemed sufficient; and if the same is denied, all and every the matters in the next preceding four sections of this Act mentioned and provided which are applicable to the case, shall be admissible in evidence to sustain or rebut such allegation.

2. In all pleadings wherein it would formerly have been necessary to allege the right to have existed from time immemorial, it shall be sufficient to allege the enjoyment thereof as of right by the occupiers of the tenement in respect whereof the same is claimed, for and during such of the periods mentioned in this Act as are applicable to the case, and without claiming in the name or right of the owner of the fee as was usually done.

(3) What proof admitted for or against such allegation.—If the other party intends to rely on any proviso, exception, incapacity, disability, contract, agreement or other matter hereinbefore mentioned, or on any cause or matter of fact or of law not inconsistent with the simple fact of enjoyment, the same shall be specially alleged, and set forth in answer to the allegation of the party claiming, and shall not be received in evidence on any general denial of such allegation. R. S. O., 1887, c. 111, s. 38.

39. No presumption admissible on proof of enjoyment for a less period than prescribed by this Act. Imp. Act, 2-3 W. IV., c. 71, s. 6.—In the several cases mentioned in and provided for by this Act, of claims to lights, ways, water-courses or other easements, no presumption shall be allowed or made in

favour or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in this Act as is applicable to the case and to the nature of the claim. R. S. O., 1887, c. 111, s. 39.

DISABILITIES AND EXCEPTIONS.

1.—*In Cases of Easements.*

40. Time during which a party could not act not to be computed against him. Imp. Act, 2-3 W. IV., c. 71, s. 7.—The time during which any person otherwise capable of resisting any claim to any of the matters mentioned in sections 34 to 39 inclusive of this Act, is an infant, idiot, *non compos mentis*, or tenant for life, or during which any action has been pending and has been diligently prosecuted until abated by the death of any party or parties thereto, shall be excluded in the computation of the period in said sections mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R. S. O., 1887, c. 111, s. 40.

41. Terms of years, etc., excluded from computation in certain cases. Imp. Act, 2-3 W. IV., c. 71, s. 8.—Where any land or water upon, over or from which any such way or other easement, water-course or run of water has been enjoyed or derived has been held under or by virtue of any term of life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of such term shall be excluded in the computation of the said period of forty years, in case the claim is, within three years next after the end, or sooner determination of such term, resisted by any person entitled to any reversion expectant on the determination thereof. R. S. O., 1887, c. 111, c. 41. (As amended by 62 Vict. (2), c. 11, s. 16.)

42. Exception as to lands of the Crown not duly surveyed and laid out.—Nothing in sections 34 to 39 inclusive of this Act shall support or maintain any claim to any profit or benefit to be taken or enjoyed from or upon any land of our Sovereign Lady the Queen, Her Heirs and Successors, or to any way or other easement, or to any water-course or the use of any water to be enjoyed or derived upon, over or from any land or water of our said Lady the Queen, Her Heirs and Successors, unless such land, way, easement or water-course or other matter lies and is situate within the limits of some town or township, or other parcel or tract of land duly surveyed and laid out by proper authority. R. S. O., 1887, c. 111, s. 42.

2.—*In cases of Land or Rent.*

43. In cases of infancy, or lunacy at the time when the right of action accrues, then five years to be allowed from the termination of the disability, or previous death. Imp. Acts, 3-4 W. IV., c. 27, s. 16; 37-38 V., c. 57, s. 3.—If at the time at which the right of any person to make an entry or distress, or to bring an action to recover any land or rent, first accrues as in sections 4, 5, and 6 mentioned, such person is under any of the disabilities hereinafter mentioned (that is to say) infancy, idiotcy, lun-

acy or unsoundness of mind, then such person, or the person claiming through him, notwithstanding that the period of ten years or five years (as the case may be) hereinbefore limited has expired, may make an entry or a distress, or bring an action, to recover such land or rent at any time within five years next after the time at which the person to whom such right first accrued ceased to be under any such disability, or died, whichever of those two events first happened. R. S. O., 1887, c. 111, s. 43.

44. Twenty years utmost allowance for disabilities. Imp. Acts, 3-4 W. IV., c. 27, s. 17; 37-38 V., c. 57, s. 3.—No entry distress or action, shall be made or brought by any person, who, at the time at which his right to make any entry or distress, or to bring an action to recover any land or rent, first accrued was under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within twenty years next after the time at which such right first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such twenty years, or although the term of five years from the time at which he ceased to be under any such disability, or died, may not have expired. R. S. O., 1887, c. 111, s. 44.

4 **er time to be allowed for a succession of disabilities. Imp. Acts, 3-4 W. IV., c. 27, s. 18; 37-38 V., c. 57, s. 9.**—Where any person is under any of the disabilities hereinbefore mentioned, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent first accrues, and departs this life without having ceased to be under any such disability, no time to make an entry or distress, or to bring an action to recover such land or rent beyond the said period of ten years next after the right of such person to make an entry or distress, or to bring an action to recover such land or rent, first accrued or the said period of five years next after the time at which such person died, shall be allowed by reason of any disability of any other person. R. S. O., 1887, c. 111, s. 45.

TELEPHONE OR TELEGRAPH COMPANIES.

5. Edw. VII., c. 10, s. 74.—No telephone or telegraph, company shall be deemed to have acquired or shall hereafter acquire any easement by prescription or otherwise in respect of wires or cables attached to private property or buildings or passing through or carried over such property unless in cases where the company has obtained a grant from the owner of the property.

R. S. O., 1897, CHAP., 146.

AN ACT RESPECTING WRITTEN PROMISES AND ACKNOWLEDGMENTS OF LIABILITY.

Written acknowledgment, etc., required to take case out of

Statute of Limitations in certain cases, s. 1.

Acknowledgment, etc., by one of several joint contractors, s. 2.

Recovery against joint contractors, s. 3.

Endorsements by payee on a bill or note, s. 4.

Set off within Statutes of Limitations, s. 5.

Ratification of promise made during infancy, to be in writing, s. 6.

Representation as to credit or character, s. 7.

Consideration for a guaranty need not appear in writing, s. 8.

Section 17 of the Statute of Frauds, extended to goods to be delivered at a future time, s. 9.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:—

1. Promise by words only not sufficient to take the case out of the Statute of Limitations. 21 Jac. I., c. 16.—No acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract whereby to take out of the operation of the Act, passed in England in the twenty-first year of the Reign of King James the First, any case falling within the provisions of the said Act respecting actions

(a) Of account and upon the case other than such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants;

(b) On simple contract or of debt grounded upon any lending or contract without specialty and

(c) Of debt for arrears of rent;
or to deprive any party of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or by his agent duly authorized to make such acknowledgment or promise. R. S. O., 1887, c. 123, s. 1.

2. Case of two or more joint contractors or executors.—Where there are two or more joint contractors, or executors or administrators of any contractor, no such joint contractor, executor or administrator shall lose the benefit of the said Act so as to be chargeable in respect or by reason only of any written acknowledgment or promise made and signed by any other or others of them, or by reason of any payment of any principal or interest made by any other or others of them. R. S. O., 1887, c. 123, s. 2.

3. Judgment where plaintiff is barred as to one or more defendants but not as to all.—In actions commenced against two or more such joint contractors, executors or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by the said Act of King James the First or by this Act, as to one or more of such joint contractors, or executors or administrators, is nevertheless entitled to recover against any other or others of the defendants by virtue of a new acknowledgment, promise or payment as aforesaid, judgment shall be given for the plaintiff as to the defendant or defendants against whom he recovers, and for the other defendant or defendants against the plaintiff. R. S. O., 1887, c. 123, s. 3.

4. Endorsement, etc., made by the payee not to take a note, etc., out of the statute.—No endorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment has been made, shall be deemed sufficient proof of the payment, so as to take the case out of the operation of the said Act of King James. R. S. O., 1887, c. 123, s. 4.

5. Statute to apply to set-off.—The said Act of King James and this Act, shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off on the part of any defendant. R. S. O., 1887, c. 123, s. 5.

6. As to ratification of promise made during non-age.—

No action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless the promise or ratification is made by some writing signed by the party to be charged therewith, or by his agent duly authorized to make the promise or ratification. R. S. O., 1887, c. 123, s. 6.

7. As to representation regarding the character, credit, etc., of a third party.—No action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain money, goods or credit thereupon, unless the representation or assurance is made in writing signed by the party to be charge therewith. R. S. O., 1887, c. 123, s. 7.

8. Consideration for promise to answer for another need not be in writing.—No special promise made by any person to answer for the debt, default or miscarriage of another person, being in writing and signed by the party to be charged therewith, or by some other person by him thereunto lawfully authorized, shall be deemed invalid to support an action, or other proceeding to charge the person by whom the promise has been made, by reason only that the consideration for the promise does not appear in writing, or by necessary inference from a written document. R. S. O., 1887, c. 123, s. 8.

9. Statute of Frauds, 29 Car. II., c. 3, extended to contracts for goods to be delivered at a future time.—Section 17 of the Act passed in England in the 29th year of the Reign of King Charles the Second, entitled, "*An Act for the prevention of Frauds and Perjuries*," shall extend to all contracts for the sale of goods of the value of \$40 and upwards, notwithstanding that the goods may be intended to be delivered at some future time, or may not at the time of the contract be actually made, procured or provided, or fit or ready for delivery, or although some act may be requisite for the making or completing thereof, or rendering the same fit for delivery. R. S. O., 1887, c. 123, s. 9.

NEW BRUNSWICK.

R. S. N. B. 1903, CHAP. 138.

RESPECTING LIMITATION OF PERSONAL ACTIONS.

1. Action on judgment, bond, or specialty.—No action or *scire facias* upon any judgment, recognizance, bond, or other specialty, shall be brought but within twenty years after the cause of action. C. S., c. 85, s. 1.

2. Action for penalty, etc.—No action for any sum of money given to the party aggrieved by any Act or Statute, or for any penalty, shall be brought but within two years after the cause of action, unless the time is otherwise limited by the Statute. C. S., c. 85, s. 2.

3. Action for assault, defamation, etc.—No action for assault, battery, wounding, imprisonment, or for words, shall be commenced but within two years after the cause of action. C. S., c. 85, s. 3.

4. Other actions.—No other action shall be commenced but within six years after the cause of action. C. S., c. 85, s. 4.

5. Acknowledgment of liability to be in writing, etc.—Effect of payment.—No acknowledgment or promise shall be evidence of a new or continuing contract, or liability whereby to take any case out of the operation of the provisions of this Chapter, or to deprive any party of the benefit thereof, unless such acknowledgment or promise be in writing, signed by the party chargeable thereby, but a payment made on account of any such debt shall have the effect of such acknowledgment or promise. C. S., c. 85, s. 5.

6. Acknowledgment or payment by co-contractor, etc.—No person jointly contracting, or liable, or his representatives, shall be answerable for or by reason of any payment, acknowledgment, or promise of his co-contractor, or debtor, or his representatives. C. S., c. 85, s. 6.

7. Recovery against co-contractor, etc., though action barred against other.—In actions against persons jointly contracting, or liable, or their representatives, the plaintiff may recover against one of the parties, though barred by the provisions of this Chapter as to the other. C. S., c. 85, s. 7.

8. Plea of abatement not to lie where action barred against person not joined as defendant.—If in any action on a contract the defendant plead in abatement that any other person ought to have been jointly sued, and issue be joined, and it shall appear that the action was, by reason of the provisions of this Chapter, barred against the person so named in the plea, the issue shall be found for the plaintiff. C. S., c. 85, s. 8.

9. Chapter applicable to set-off.—This Chapter shall apply to any demand alleged by way of set-off on the part of any defendant. C. S., c. 85, s. 9.

10. Action on set-off where nonsuit.—If the defendant is deprived of the benefit of his set-off by the nonsuit, or any act of the plaintiff, he may bring a new action therefor within one year thereafter. C. S., c. 85, s. 10.

11. Disability or absence of plaintiff or defendant.—Actions by or against minors, married women, persons insane, or out of the Province, may be commenced within the like period after the removal of the disability, as is allowed for bringing the action in ordinary cases. C. S., c. 85, s. 11.

12. Action where judgment for plaintiff reversed.—If in any action judgment be given for the plaintiff, and the same be reversed by error, or if judgment be arrested after verdict, the plaintiff may commence a new action within one year after such judgment reversed or arrested. C. S., c. 85, s. 12.

13. New action where abatement of writ for form.—If a writ abate for any matter of form, the plaintiff, or his representatives in case of his death, when the action survives, may bring a new action within one year after the abatement. C. S., c. 85, s. 13.

14. Death of plaintiff or defendant.—If any person bring or be liable to any action, and shall die before the time limited therefor expires, or within thirty days thereafter, and the cause of action

survives, the action may be commenced by or against his representative within six months thereafter. C. S., c. 85, s. 14.

15. Chapter not applicable to bank note.—The provisions of this Chapter shall not apply to any action brought for the recovery of a note issued by any incorporated bank. C. S., c. 85, s. 15.

NOTE.—See *The Trustee Act*, Chapter 162, s. 50, as to when trustees may plead the *Statute of Limitations*, and see s. 18 of Chapter 163, respecting executors and trustees, for limit of time within which action may be brought to recover personal estate of intestate in hands of the personal representatives.

R. S. N. B., 1903, CHAP. 139.

RESPECTING LIMITATION OF ACTIONS IN RESPECT TO REAL PROPERTY.

1. Right of Crown extinguished by adverse possession of 60 years.—No claim for lands or rent shall be made, or action brought by His Majesty, after a continuous adverse possession of sixty years. C. S., c. 84, s. 1.

2. Interpretation.—“**Land.**”—**Person through whom another claims.**—“**Person.**”—The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning shall, in this Chapter, except where the nature of the provision or the context of the Chapter shall exclude such construction, be interpreted as follows, that is to say:—The word “land” shall extend to messuages and all other corporeal hereditaments whatsoever, and also to any share, estate, or interest in them or any of them, whether the same shall be a freehold or chattel interest; and the person through whom another person is said to claim, shall mean any person by, through, or under, or by the act of whom the person so claiming became entitled to the estate or interest claimed as heir, issue in tail, tenant by the curtesy of England, tenant in dower, successor, special or general occupant, executor, administrator, legatee, husband, assignee, appointee, devisee, or otherwise; and the word “person” shall extend to a body politic, corporate, or collegiate, and to a class of creditors or other persons, as well as an individual. C. S., c. 84, s. 2.

3. When entry to be made, or action to be brought to recover land.—No person shall make an entry, or bring an action to recover any land, but within twenty years next after the time at which the right to make such entry, or to bring such action shall have first accrued to some person through whom he claims; or if such right shall not have accrued to any person through whom he claims then within twenty years next after the time at which the right to make such entry or to bring such action shall have first accrued to the person making or bringing the same. C. S., c. 84, s. 3.

4. When right deemed to have accrued in the case of an estate in possession.—On dispossession.—On abatement or death.—On alienation.—In case of future estates.—On forfeiture or breach of condition.—In the construction of this Chapter, the right to make an entry, or bring an action to recover any land, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say:—When the person claiming such land, or some person through whom he claims, shall, in respect of the estate or interest claimed, have been in possession or in receipt

of the profits of such land, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits were so received; and when the person claiming such land shall claim the estate or interest of some deceased person who shall have continued in such possession or receipt in respect of the same estate or interest until the time of his death, and shall have been the last person entitled to such estate or interest who shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death; and when the person claiming such land shall claim in respect of an estate or interest in possession, granted, appointed or otherwise assured by an instrument (other than a will) to him, or some person through whom he claims by a person being in respect of the same estate or interest, in the possession or receipt of the profits of the land, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument; and when the estate or interest claimed shall have been an estate or interest in reversion or remainder, or other future estate or interest, and no person shall have obtained the possession or receipt of the profits of such land in respect of such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession; and when the person claiming such land, or the person through whom he claims, shall have become entitled by reason of any forfeiture or breach of condition, then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken. C. S., c. 84, s. 4.

5. Where forfeiture not taken advantage of, remainderman to have a new right when estate comes into possession.—But when any right to make an entry, or to bring an action to recover any land, by reason of any forfeiture or breach of condition shall have first accrued, in respect of any estate or interest in reversion or remainder, and the lands shall not have been recovered by virtue of such right, the right to make an entry or bring an action to recover such land, shall be deemed to have first accrued in respect of such estate or interest at the time when the same shall have become an estate or interest in possession, as if no such forfeiture or breach of condition had happened. C. S., c. 84, s. 5.

6. When right in respect of estate in reversion deemed to have accrued.—A right to make an entry, or to bring an action to recover any land, shall be deemed to have first accrued, in respect of an estate or interest in reversion, at the time at which the same shall have become an estate or interest in possession, by the determination of any estate or estates in respect of which such land shall have been held, or the profits thereof shall have been received, notwithstanding the person claiming such land, or some person through whom he claims, shall at any time previously to the creation of the estate or estates which shall have determined, have been in possession or receipt of the profits of such land. C. S., c. 84, s. 6.

7. Administrator to claim as if he obtained estate upon deceased's death.—For the purposes of this Chapter, an administrator claiming the estate or interest of the deceased person of whose chattels he shall be appointed administrator, shall be deemed to claim

as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration. C. S., c. 84, s. 7.

8. The right of tenant at will to be deemed to have accrued at end of one year.—When any person shall be in possession, or in receipt of the profits of any land as tenant at will, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry or bring an action to recover such land, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined; but no mortgagor or *cestui que trust* shall be deemed to be a tenant at will within the meaning of this clause, to his mortgagee or trustee. C. S., c. 84, s. 8.

9. When right deemed to have accrued in tenancy from year to year.—When any person shall be in possession, or in receipt of the profits of any land as tenant from year to year, or other period, without any lease in writing, the right of the person entitled subject thereto, or the person through whom he claims, to make an entry or bring an action to recover such land, shall be deemed to have first accrued at the determination of the first of such years, or other periods, or at the last time when any rent payable in respect of any such tenancy shall have been received (which shall last happen). C. S., c. 84, s. 9.

10. Where rent reserved in lease in writing wrongfully received, when right to accrue.—When any person shall be in possession, or in receipt of the profits of any land, by virtue of a lease in writing, by which a rent amounting to the yearly sum of four dollars or upwards shall be reserved, and the rent reserved by such lease shall have been received by some person wrongfully claiming to be entitled to such land in reversion immediately expectant on the determination of such lease, and no payment in respect of the rent reserved by such lease shall afterwards have been made to the person rightfully entitled thereto, the right of the person entitled to such land, subject to such lease, or of the person through whom he claims, to make an entry or to bring an action after the determination of such lease, shall be deemed to have first accrued at the time at which the rent reserved by such lease was first so received by the person wrongfully claiming as aforesaid; and no such right shall be deemed to have first accrued upon the determination of such lease to the person rightfully entitled. C. S., c. 84, s. 10.

11. Entry not to be deemed possession.—No person shall be deemed to have been in possession of any land within the meaning of this Chapter, merely by reason of having made an entry thereon. C. S., c. 84, s. 11.

12. Right not preserved by continual claim.—No continual or other claim upon or near any land shall preserve any right of making an entry, or of bringing an action. C. S., c. 84, s. 12.

13. Possession of one co-parcener, etc., not to be the possession of the others.—When any one or more of several persons entitled to any land as co-parceners, joint tenants, or tenants in common, shall have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land or of the profits thereof, for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land, such possession or receipt

shall not be deemed to have been the possession or receipt of or by such last mentioned person or persons, or any of them. C. S., c. 84, s. 13.

14. Acknowledgment in writing to person entitled, or agent, equivalent to possession or receipt of profits.—When any acknowledgment of the title of the person entitled to any land shall have been given to him or his agent, in writing, signed by the person in possession, or in receipt of the profits of such land, then such possession or receipt of or by the person by whom such acknowledgment shall have been given, shall be deemed, according to the meaning of this Chapter, to have been the possession or receipt of or by the person to whom or to whose agent such acknowledgement shall have been given, at the time of giving the same, and the right of such last mentioned person, or any person claiming through him, to make an entry, or to bring an action to recover such land, shall be deemed to have first accrued at and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given. C. S., c. 84, s. 14.

15. Five years allowed from passing of Chapter to bring action where possession not adverse.—When no such acknowledgment shall have been given before the time appointed for this Chapter to take effect, and the possession or receipt of the profits of the land shall not, at such time, have been adverse to the right or title of the person claiming to be entitled thereto, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or bring an action to recover such land at any time within five years next after the time first aforesaid. C. S., c. 84, s. 15.

16. Where disability at the time right of action accrues, 10 years to be allowed from termination of disability, or death.—If at the time at which the right of any person to make an entry, or bring an action to recover any land, shall have first accrued as aforesaid, such person shall have been under any of the disabilities hereinafter mentioned, that is to say, infancy, coverture, idiocy, lunacy, unsoundness of mind or absence beyond seas, then such person, or the person claiming through him, may, notwithstanding the period of twenty years hereinbefore limited shall have expired, make an entry or bring an action to recover such land at any time within ten years next after the time at which the person to whom such right shall first have accrued as aforesaid shall have ceased to be under any such disabilities, or shall have died (which shall have first happened). C. S., c. 84, s. 16.

17. Forty years utmost allowance for disabilities.—No entry or action shall be made or brought by any person who, at the time at which his right to make an entry or bring an action to recover any land shall have first accrued, shall be under any of the disabilities hereinbefore mentioned, or by any person claiming through him, but within forty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under one or more of such disabilities during the whole of such forty years, or although the term of ten years from the date at which he shall have ceased to be under any such disability, or have died, shall not have expired. C. S., c. 84, s. 17.

18. Further time not to be allowed for a succession of disabilities.—When any person shall be under any of the disabilities hereinbefore mentioned at the time at which his right to make an

entry, or bring an action to recover any land, shall have first accrued, and shall die without having ceased to be under any such disability, no time to make an entry or to bring an action to recover such land beyond the said period of twenty years next after the right of such person to make such entry, or to bring such action, shall have first accrued, or the said period of ten years next after the time at which such person shall have died, shall be allowed by reason of any disability of any other person. C. S., c. 84, s. 18.

19. Certain places not to be deemed beyond seas.—No part of the Dominion of Canada, or of the British North American Provinces, or of the United States of America, shall be deemed to be beyond seas within the meaning of this Chapter. C. S., c. 84, s. 19.

20. When right to an estate in possession barred, right of same person to future estate also barred.—When the right of any person to make an entry, or bring an action to recover any land to which he may have been entitled, for an estate or interest in possession, shall have been barred by the determination of the period hereinbefore limited, which shall be applicable in such case, and such person shall at any time during the same period have been entitled to any other estate, interest, right or possibility in reversion, remainder, or otherwise, in or to the same land, no entry or action shall be made or brought by such person, or any claimant through him, to recover such land in respect of such other estate, interest, right or possibility, unless in the meantime such land shall have been recovered by some person entitled to an estate, interest or right, which shall have been limited or taken effect after or in defeasance of such estate or interest in possession. C. S., c. 84, s. 20.

21. Suit in equity not to be brought where action would be barred at law.—No person claiming any land in equity shall bring any suit to recover the same, but within the period during which by virtue of the provisions hereinbefore contained, he might have made an entry, or brought an action to recover the same respectively, if he had been entitled at law to such estates, interest, or right, in or to the same as he shall claim therein in equity. C. S., c. 84, s. 21.

22. In express trust, right not to be deemed to have accrued until conveyance to purchaser.—When any land shall be vested in a trustee upon any express trust, the right of the *cestui que trust*, or any person claiming through him, to bring a suit against the trustee, or any person claiming through him, to recover such land, shall be deemed to have first accrued according to the meaning of this Chapter, at and not before the time at which such land shall have been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him. C. S., c. 84, s. 22.

23. Where concealed fraud, time not to run while fraud concealed.—In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might have been first known or discovered; but nothing in this section shall enable any owner of lands to have a suit in equity for the recovery thereof, or setting aside any conveyance of such lands, on account of fraud against any *bona fide* purchaser for valuable consideration, who has not assisted in the commission of such fraud, and who at the time that he made the purchase did not know, and had

no reason to believe, that any such fraud had been committed. C. S., c. 84, s. 23.

24. Saving of equity jurisdiction where acquiescence, etc.—Nothing in this Chapter shall be deemed to interfere with any rule or jurisdiction of a Court of Equity is refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring a suit many not be barred by virtue of this Chapter. C. S., c. 84, s. 24.

25. Mortgagor's rights extinguished at end of 20 years from time mortgagee took possession, or from last written acknowledgment.—When a mortgagee shall have obtained the possession or receipt of the profits of any land comprised in his mortgage, the mortgagor, or any person claiming through him, shall not bring a suit to redeem the mortgage but within twenty years next after the time at which the mortgagee obtained such possession or receipt, unless in the meantime an acknowledgment in writing, signed by the mortgagee, or the person claiming through him, of the title of the mortgagor, or of his right of redemption, shall have been given to him, his agent, or some person claiming his estate, and in such case no suit shall be brought but within twenty years next after the time at which such acknowledgment, or the last of such acknowledgments, if more than one was given; and when there shall be more than one mortgagor or more than one person claiming through the mortgagor or mortgagors, such acknowledgment, if given to any of such mortgagors or persons, or his or their agent, shall be as effectual as if the same had been given to all such mortgagors or persons; but where there shall be more than one mortgagee, or more than one person claiming the estate or interest of the mortgagee or mortgagees, such acknowledgment, signed by one or more of such mortgagees or persons, shall be effectual only as against the party or parties signing as aforesaid, and the person or persons claiming any part of the mortgage money or land by, from, or under him or them, and any person or persons entitled to any estate or interest, to take effect after or in defeasance of his or their estate or interest, and shall not operate to give to the mortgagor or mortgagors a right to redeem the mortgage as against the person entitled to any other undivided or divided part of the money or land; and where such of the mortgagees or persons aforesaid as shall have given such acknowledgment, shall be entitled to a divided part of the land comprised in the mortgage, or some estate or interest therein, and not to any ascertained part of the mortgage money, the mortgagor or mortgagors shall be entitled to redeem the same divided part of the land on payment, with interest, if the part of the mortgage money which shall bear the same proportion to the whole of the mortgage money as the value of such divided part of the land shall bear to the value of the whole land comprised in the mortgage. C. S., c. 84, s. 25.

26. Right extinguished at end of period of limitation.—At the determination of the period limited by this Chapter to any person for making an entry or bringing an action or suit, the right and title of such person to the land for the recovery whereof such entry, action or suit respectively might have been made or brought within such period, shall be extinguished. C. S., c. 84, s. 26.

27. Receipt of rent to be deemed receipt of profits.—The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee, or any person claiming under him (but subject to the lease), be deemed to be the receipt of the profits of the land for the purposes of this Chapter. C. S., c. 84, s. 27.

28. Certain forms of actions abolished.—No writ of right, or writ in nature of a writ of right, and no other action, real or mixed, except a writ of right of dower, or writ of dower *unde nihil habet*, or an ejectment, shall be hereafter brought. C. S., c. 84, s. 28.

29. Money charged upon land, and legacies, to be deemed satisfied at end of 20 years, if in meantime no interest paid or acknowledgment given.—No action, or suit, or other proceedings, shall be brought to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon or payable out of any land, at law or in equity, or any legacy, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action, or suit, or proceeding, shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one were given. C. S., c. 84, s. 29.

30. Rights of mortgagee not extinguished for 20 years after last payment of principal or interest.—It shall and may be lawful for any person entitled to or claiming under any mortgage of land, to make an entry or bring an action at law, or suit in equity, to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, such payment being made within twenty years after the right of entry first accrued, although more than twenty years may have elapsed since the time at which the right to make such entry or bring such action or suit in equity shall have first accrued, anything in this Chapter to the contrary notwithstanding. C. S., c. 84, s. 30.

31. No arrears of dower to be recovered for more than 6 years.—No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or suit for a longer period than six years next before the commencement of such action or suit. C. S., c. 84, s. 31.

NOVA SCOTIA,

R. S. N. S., 1900, CHAP. 167.

OF THE LIMITATION OF ACTIONS.

SHORT TITLE.

1. Short title.—This Chapter may be cited as "The Statute of Limitations."

LIMITATION OF CERTAIN ACTIONS.

2. Time within which actions shall be brought.—(1) The actions in this section mentioned shall be commenced within and not after the times respectively in such section mentioned, that is to say:—

(a) **Assault, slander, &c., one year**—Actions for assault, menace, battery, wounding, imprisonment, or slander, within one year after one cause of any such action arose;

(b) **Penalties, &c., two years**—Actions for penalties, damages, or sums of money given to the parties aggrieved by any statute, within two years after the cause of any such action arose;

(c) **Lease, bond, specialty, judgment, or recognizance, twenty years**.—Actions for rent upon an indenture of demise, actions upon a bond or other specialty, actions upon any judgment or recognizance, within twenty years after the cause of any such action arose, or the recovery of such judgment;

(d) **Contract or award not by specialty, money levied, trespass, conversion, libel, malicious prosecution, seduction, crim. con., trespass on the case, six years**.—All actions grounded upon any lending or contract, expressed or implied, without specialty, or upon any award where the submission is not by specialty, or for money levied by execution; all actions for direct injuries to real or personal property; actions for the taking away or conversion of property, goods, and chattels; actions for libel, malicious prosecution and arrest, seduction, criminal conversation; and actions for all other causes which would formerly have been brought in the form of action called trespass on the case, except as herein excepted, within six years after the cause of any such action arose.

(2) **Action of accounts, &c., six years, only items of accounts which have arisen within six years recoverable**.—All actions of account, or for not accounting, or for such accounts as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced within six years after the cause of any such action arose; and no claim in respect to a matter which arose more than six years before the commencement of any such action, shall be enforceable by action by reason only of some other matter of claim comprised in the same account having arisen within six years next before the commencement of such action.

(3) **Not to alter limitation under any special statute**.—Nothing in this section contained shall extend to any action given by any statute when the time for bringing such action is by any statute specially limited. R. S., c. 112, ss. 1, 6, 7, 24.

DISABILITIES AND EXCEPTIONS.

3. Statute runs against plaintiff under disability or absent from province only from time of removal or return.—If any person who is entitled to any action in the next preceding section mentioned is, at the time any such cause of action accrues, within the age of twenty-one years, a married woman, a person of unsound mind, or out of the province, then such person shall be at liberty to bring the same action, so as such person commences the same within such time after his or her coming to or being of full age, discover, of sound mind, or returned to the province, as other persons having no such impediment should, according to the provisions of this Chapter, have done. R. S., c. 112, s. 25 (part).

4. Statute only runs against plaintiffs where defendants are under disability or absent, from time of removal or return.—(1) If any person against whom there is any such cause of action is, at the time such cause of action accrues, within the age of twenty-one years, a married woman, a person of unsound mind, or out of the province, then the person entitled to any such cause of action shall be at liberty to bring the same against such person

within such times, after his or her coming to or being of full age, discovered, of sound mind, or returned to the province, as are before limited.

(2) **Where joint debtors, statute runs against any under disability or absent.**—Provided that where the cause of action lies against two or more joint debtors, the person who is entitled to the same shall not be entitled to any time within which to commence such action against any one of the joint debtors who was within the province at the time such cause of action accrued, by reason only that some other of the joint debtors was, at the time such cause of action accrued, out of the province.

(3) **Action may be commenced after removal or return, notwithstanding judgment has been entered against joint debtor.**—The person so entitled, as aforesaid, shall not be barred from commencing an action against the joint debtor who was out of the province at the time the cause of action accrued, after his return to the province, by reason only that judgment has been already recovered against the joint debtor who was within the province at the time aforesaid. R. S., c. 112, ss. 8, 9, 25 (part.)

WRITTEN PROMISES AND ACKNOWLEDGMENTS.

5. **A promise, to take a case out of the statute, must be in writing. Actions on simple contract.**—(1) In any action grounded upon simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the preceding section of this Chapter, or to deprive any person of the benefit thereof, unless such acknowledgment or promise is made or contained by or in some writing signed by the party chargeable thereby, or his agent duly authorized to make such acknowledgment or promise.

(2) **Case of joint contractors or executors, one not to lose benefit of statute in consequence of written promise or payment by another.**—Where there are two or more joint contractors, or executors, or administrators of any such contractor, no such joint contractor, executor, or administrator shall lose the benefit of the preceding sections of this Chapter by reason only of any written acknowledgment or promise made and signed by any other of them, or by the agent of any other of them, or by reason only of any payment of any principal or interest made by any other of them.

(3) **But recovery may be had against one making promise, &c.**—In any action against two or more joint contractors, or executors, or administrators, if it appears at the trial or otherwise that the plaintiff, though barred by such sections as to one or more of such joint contractors, or executors, or administrators, is nevertheless entitled to recover against any other defendant, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff, as to such defendant against whom he recovers, and for the other defendant against the plaintiff.

(4) **Nothing in section to lessen the effect of payment of principal or interest.**—Except as aforesaid, nothing in this section contained shall alter or take away, or lessen the effect of, any payment of any principal or interest made by any person whosoever. R. S., c. 112, s. 2.

6. Defendant cannot set up non-joinder of another defendant, if remedy against latter is barred by this Chapter.—If any defendant in an action on a simple contract, pleads any matter to the effect that any other person ought to be jointly sued, or makes any application grounded upon such contention, and it appears that the action could not, by reason of this Chapter, be maintained against such person, such pleading or application shall be dismissed. R. S., c. 112, s. 3.

7. Effect of written acknowledgment or payment in actions upon indenture, specialty, or recognizance, may be set up in reply.—If any acknowledgment has been made, either by writing signed by the party liable by virtue of an indenture, or by virtue of any specialty or recognizance, or his agent, or by part payment, or part satisfaction on account of any principal or interest being then due thereon, the person entitled may bring an action for the money remaining unpaid, and so acknowledged to be due, within twenty years after such acknowledgment by writing, or part payment, or part satisfaction, as aforesaid; or in case the person entitled to such action is, at the time of the acknowledgment, under disability, as aforesaid, or the party making the acknowledgment is, at the time of making the same, out of the province, then within twenty years after such disability has ceased, as aforesaid, or the party has returned to the province, as the case may be; and the plaintiff in any such action on any indenture, specialty or recognizance may, by way of reply, state such acknowledgment, and that such action was brought within the time aforesaid to answer to a pleading setting up this Chapter. R. S., c. 112, s. 26.

8. Indorsement by payee not evidence.—No indorsement or memorandum of any payment, written or made upon any promissory note, bill of exchange, or other writing, by or on behalf of the party to whom such payment was made, shall be deemed sufficient proof of such payment, so as to take the case out of the operation of this Chapter. R. S., c. 112, s. 4.

LAND AND RENT.

9. No land or rent to be recovered, but within twenty years after the right of action accrued.—No person shall make an entry or distress, or bring an action to recover any land or rent, but within twenty years next after the time at which the right to make such entry or distress or to bring such action first accrued to some person through whom he claims, or if such right did not accrue to any person through whom he claims, then within twenty years next after the time at which the right to make such entry or distress, or to bring such action first accrued to the person making or bringing the same. R. S., c. 112, s. 11.

10. When the right shall be deemed to have first accrued.—In the construction of this Chapter the right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say:—

(a) **On dispossession.**—Where the person claiming such land or rent; or some person through whom he claims, has, in respect to the estate or interest claimed, been in possession or in receipt of the profits of such land, or in receipt of such rent, and has, while entitled thereto, been dispossessed, or has discontinued such possession or receipt, then such right shall be deemed to have first accrued at

the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;

(b) **On death.**—Where the person claiming such land or rent claims the estate or interest of some deceased person who continued in such possession or receipt in respect to the same estate or interest until the time of his death, and was the last person entitled to such estate or interest who was in such possession or receipt, then such right shall be deemed to have first accrued at the time of such death.

(c) **On alienation.**—Where the person claiming such land or rent claims in respect to an estate or interest in possession granted, appointed, or otherwise assured by any instrument (other than a will) to him, or some person through whom he claims, by a person being in respect to the same estate, or interest, in the possession or receipt of the profits of the land, or in receipt of the rent, and no person entitled under such instrument has been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became entitled to such possession or receipt by virtue of such instrument;

(d) **In case of reversion or future estates.**—Where the estate or interest claimed is an estate or interest in reversion or remainder, or other future estate or interest, and no person has obtained the possession or receipt of the profits of such land, or the receipt of such rent in respect to such estate or interest, then such right shall be deemed to have first accrued at the time at which such estate or interest became an estate or interest in possession;

(e) **In case of forfeiture or breach of condition.**—Where the person claiming such land or rent, of the person through whom he claims, has become entitled by reason of any forfeiture or breach of condition then such right shall be deemed to have first accrued when such forfeiture was incurred, or such condition was broken.

(f) **In the case of tenant at will the right shall be deemed to have accrued at termination of tenancy, or one year from commencement of tenancy.**—Where any person is in possession or in receipt of the profits of any land, or in receipt of any rent as tenant at will, the right of the person entitled subject thereto, or the person through whom he claims, to make an entry, or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued either at the determination of such tenancy, or at the expiration of one year next after the commencement of such tenancy, at which time such tenancy shall be deemed to have determined. Provided always that no mortgagor or *cestui que trust* shall be deemed to be a tenant at will, within the meaning of this paragraph, to his mortgagee or trustee;

(g) **A tenancy from year to year right deemed to have accrued at the end of first year or last payment of rent.**—Where any person is in possession or receipt of the profits of any land or in receipt of any rent, as tenant from year to year, or other period, without any lease in writing, the right of the person entitled subject thereto, or of the person through whom he claims, to make an entry, or distress, or to bring an action to recover such land or rent, shall be deemed to have first accrued at the determination of the first of such years, or other periods, or at the last time when any rent payable in respect to such tenancy was received, whichever last happened. R. S., c. 112, ss. 12, 13, 14.

11. Administrator claims as if he obtained estate without interval after death of deceased.—For the purposes of this Chapter, an administrator, claiming the estate or interest of the deceased person, shall be deemed to claim as if there had been no interval of time between the death of such deceased person and the grant of the letters of administration.

12. A mere entry not deemed possession.—No person shall be deemed to have been in possession of any land, within the meaning of this Chapter, merely by reason of having made an entry thereon. R. S., c. 112, s. 16.

13. Continual or other claim not to preserve right of entry.—No continual or other claim, upon or near any land, shall preserve any right of making an entry or distress, or of bringing an action. R. S., c. 112, s. 16.

14. Possession of one co-parcener, &c., not to be the possession of the others.—Where any one or more of several persons entitled to any land or rent as co-parceners, joint tenants, or tenants in common, have been in possession or receipt of the entirety, or more than his or their undivided share or shares of such land, or of the profits thereof, or of such rent for his or their own benefit, or for the benefit of any person or persons other than the person or persons entitled to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to have been the possession or receipt of or by such last-mentioned person or persons, or any of them. R. S., c. 112, s. 15.

15. Possession of the relatives not to be possession of the heirs.—Where a relation of the persons entitled as heirs to the possession or receipt of the profits of any land, or to the receipt of any rent, enters into the possession or receipt thereof, such possession or receipt shall not be deemed to be the possession or receipt of or by the persons entitled as heirs.

16. Acknowledgment in writing given to person entitled, or his agent, to be equivalent to possession or receipt of rent.—Where any acknowledgment of the title of the person entitled to any land or rent has been given to him, or to his agent, in writing, signed by the person in possession or in receipt of the profits of such land, or in receipt of such rent, then such possession, or receipt of or by the person by whom such acknowledgment was given, shall be deemed, according to the meaning of this Chapter, to have been the possession or receipt of or by the person to whom, or to whose agent, such acknowledgment was given, at the time of giving the same; and the right of such last mentioned person, or of any person claiming through him, to make an entry or distress, or bring an action to recover such land or rent, shall be deemed to have first accrued at, and not before the time at which such acknowledgment, or the last of such acknowledgments, if more than one, was given. R. S., c. 112, s. 18.

17. Receipt of rent to be deemed receipt of profits.—The receipt of the rent payable by any tenant from year to year, or other lessee, shall, as against such lessee or any person claiming under him, but subject to the lease, be deemed to be the receipt of the profits of the land for the purposes of this Chapter.

18. Person under disability allowed ten years from termination of infancy to make entry, &c.—If at the time at which the right of any person to make an entry or distress, or bring an action to recover any land or rent first accrues as aforesaid, such

person is under any of the disabilities hereinafter mentioned (that is to say) infancy, coverture, idiocy, lunacy, unsoundness of mind, or absence from the province, then such person, or the persons claiming through him may, notwithstanding the period of twenty years hereinbefore limited has expired, make an entry, or distress, or bring an action to recover such land or rent at any time within ten years next after the time at which the person to whom such right first accrued as aforesaid ceased to be under any such disability, or died (whichever first happened). R. S., c. 112, s. 19.

19. No entry, &c., after forty years.—No entry, distress, or action shall be made or brought by any person who, at the time at which his right to make an entry or distress, or to bring an action to recover any land or rent, first accrued, was under any of the disabilities in the next preceding section mentioned, or by any person claiming through him, but within forty years next after the time at which such right first accrued; although the person under disability at such time has remained under one or more of such disabilities during the whole term of such forty years, or although the term of ten years from the time at which he ceased to be under any such disability, or died, has not expired. R. S., c. 112, s. 20.

20. No claim for land or rent by Her Majesty after sixty years.—No claim for land or rent shall be made by Her Majesty but within sixty years after the right of action to recover such land or rent first accrued. R. S., c. 112, s. 33.

21. At the end of the period of limitation, the right of party out of possession is extinguished.—At the determination of the period limited by this Chapter to any person for making an entry, or distress, or bringing any action, the right and title of such person to the land or rent, for the recovery whereof such entry, distress, or action respectively might have been made or brought within such period, shall be extinguished.

MORTGAGES AND CHARGES ON LAND.

22. Money secured by mortgages, &c., and legacies, deemed satisfied at the end of twenty years, if no interest is paid or acknowledgment in writing in the meantime.—No action or other proceeding shall be brought to recover any sum of money secured by any mortgage, judgment or lien, or otherwise charged upon or payable out of any land or rent at law or in equity, or any legacy, but within twenty years next after a present right to receive the same has accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of the principal money, or some interest thereon, has been paid, or some acknowledgment of the right thereto has been given in writing, signed by the person by whom the same is payable, or his agent, to the person entitled thereto, or his agent; and in such case no such action or proceeding shall be brought but within twenty years after such payment or acknowledgment, or the last of such payments or acknowledgments, if more than one was made or given. R. S., c. 112, s. 21.

23. Person claiming under mortgage to make entry or bring action within twenty years after payment on account.—Any person entitled to or claiming under a mortgage of land, may make an entry, or bring an action to recover such land at any time within twenty years next after the last payment of any part of the principal money or interest secured by such mortgage, although

more than twenty years have elapsed since the time at which the right to make such entry or bring such action first accrued. 1886, c. 37, s. 1.

ARREARS OF DOWER, RENT AND INTEREST.

24. No arrears of dower, &c., recoverable after six years.—No arrears of dower, nor any damages on account of such arrears, shall be recovered or obtained by any action or proceeding for a longer period than six years next before the commencement of such action or suit. R. S., c. 112, s. 22.

25. No arrears of rent, or interest on money charged on or payable out of land shall be recovered after six years.—No arrears of rent, or of interest in respect to any sum of money charged upon or payable out of any land or rent, or in any respect to any legacy, or any damages in respect to such arrears of rent, or interest, shall be recovered by any distress, action or proceeding, but within six years next after the same respectively have become due, or next after an acknowledgment of the same in writing has been given to the person entitled thereto, or his agent, signed by the person by whom the same was payable, or his agent. R. S., c. 112, s. 23.

EQUITABLE PLANS.

26. Claims against trustees.—(1) In any action or other proceeding against a trustee, or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply.

(a) All rights and privileges, conferred by any of the provisions of this Chapter shall be enjoyed in the like manner, and to the like extent, as they would have been enjoyed in such action or other proceeding if the trustee, or person claiming through him had not been a trustee or person claiming through him,

(b) If the action or other proceeding is brought to recover money or other property, and is one to which no other provision of this Chapter applies, the trustee, or person claiming through him, shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action or other proceeding, in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so, nevertheless, that the statute of limitations shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding, and this section had been pleaded. 1889, c. 18, s. 17.

27. In case of land vested in trustee on express trust, the right shall not be deemed to have accrued until a conveyance to the purchaser.—Where any land or rent is vested in a trustee on express trust, the right to recover the same shall not be deemed to have accrued until a conveyance to the purchaser. 1889, c. 18, s. 18.

trustee upon any express trust, the right of the beneficiary, or any person claiming through him, to bring an action against the trustee, or any person claiming through him, to recover such land or rent, shall be deemed to have first accrued, according to the meaning of this Chapter, at and not before the time at which such land or rent has been conveyed to a purchaser for a valuable consideration, and shall then be deemed to have accrued only as against such purchaser, and any person claiming through him.

28. In case of fraud, no time shall run while fraud remains concealed.—In every case of a concealed fraud, the right of any person to bring an action for the recovery of any land, or rent, of which he, or any person through whom he claims, has been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud was, or with reasonable diligence might have been, first known or discovered.

29. Unless in the case of a "bona fide" purchaser for value without notice.—Nothing in the next preceding section contained shall enable any owner of lands or rents to bring an action for the recovery of such lands or rents, or for setting aside any conveyance of such lands or rents on account of fraud, against any *bona fide* purchaser for valuable consideration who has not assisted in the commission of such fraud and who, at the time he made the purchase, did not know, and had no reason to believe, that any such fraud had been committed.

30. Right to refuse relief on the ground of acquiescence or otherwise.—Nothing in this Chapter contained shall be deemed to interfere with any rule of equity in refusing relief on the ground of acquiescence, or otherwise, to any person whose right to bring an action is not barred by virtue of this Chapter.

PREScription IN CASE OF EASEMENTS.

31. Certain claims not defeated by showing only that the enjoyment began more than twenty years previously. Indefeasible if enjoyed over forty years.—No claim which may be lawfully made at the common law by custom, prescription, or grant, to any way or other easement, or to any water-course, or the use of any water to be enjoyed or derived upon, over or from any land or water of Our Lady the Queen, her heirs or successors, or being the property of any ecclesiastical or lay person, or body corporate, when such way or other matter as herein last before mentioned has been actually enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated or destroyed by showing only that such way or other matter was first enjoyed at any time prior to such period of twenty years; but, nevertheless, such claim may be defeated in any other way by which the same is now liable to be defeated; and where such way or other matter as herein last before mentioned has been so enjoyed as aforesaid for the full period of forty years, the right thereto shall be deemed absolute and indefeasible, unless it appears that the same was enjoyed by some consent or agreement expressly given, or made for that purpose by deed or writing. R. S., c. 112, s. 27.

32. Access and use of light for twenty years indefeasible. Exception.—(1) When the access and use of light to and for any dwelling-house, work-shop, or other building has been actually enjoyed therewith for the full period of twenty years, without interruption, the right thereto shall be deemed absolute and indefeasible,

any local usage or custom to the contrary notwithstanding, unless it appears that the same was enjoyed by some consent or agreement expressly made or given for that purpose by deed or writing.

(2) **Not to apply to Halifax or incorporated towns.**—This section shall not apply to the city of Halifax, or to any incorporated town. R. S., c. 112, s. 28; 1892, c. 31, s. 1.

33. Terms of years under two preceding sections how calculated, and what act only shall be an interruption of the prescription.—Each of the respective periods of years in the next two preceding sections mentioned, shall be deemed and taken to be the period next before some action or proceeding wherein the claim or matter to which such period relates, was, or is, brought into question; and no act or other matter shall be deemed an interruption within the meaning of the said two sections, unless the same has been submitted to or acquiesced in for one year after the party interrupted has had notice thereof, and of the person making or authorizing the same to be made. R. S., c. 112, s. 29.

34. No presumption admissible on proof of enjoyment for less period than that prescribed by the said two sections.—In the several cases mentioned in and provided for by the said two sections of the claims to ways, or other easements, water-courses, the use of any water or lights, no presumption shall be allowed or made in favor or support of any claim upon proof of the exercise or enjoyment of the right or matter claimed for any less period of time or number of years than for such period or number mentioned in the said two sections as is applicable to the case and to the nature of the claim. R. S., c. 112, s. 30.

35. Time during which party could not act under the two sections through disability not to be computed against him.—Exception.—The time during which any person otherwise capable of resisting any claim to any of the matters in the said two sections mentioned is an infant, idiot, person of unsound mind, married woman or tenant for life, or during which any action or proceeding has been pending, and has been diligently prosecuted, until abated by the death of any party or parties thereto, shall be excluded in the computation of the periods in the said two sections mentioned, except only in cases where the right or claim is thereby declared to be absolute and indefeasible. R. S., c. 112, s. 31.

36. Terms of years, &c., excluded from computation in certain cases.—Where any land or water upon, over, or from which any such way or watercourse, or use of water has been enjoyed or derived, is held under or by virtue of any term of life, or any term of years exceeding three years from the granting thereof, the time of the enjoyment of any such way or other matter as herein last before mentioned during the continuance of any such term, shall be excluded in the computation of the said period of forty years in case the claim is within three years next after the end or sooner determination of such term resisted by any person entitled to any reversion expectant on the determination thereof. R. S., c. 112, s. 32.

SET-OFF AND COUNTER-CLAIM.

37. Chapter to apply to set-off and counter-claim by defendant.—This Chapter shall apply to the case of any claim of the nature hereinbefore mentioned, alleged by way of set-off or counter-claim on the part of any defendant. R. S., c. 112, s. 5.

QUEBEC.

CIVIL CODE OF LOWER CANADA.

BOOK THIRD.

TITLE NINETEENTH.

OF PRESCRIPTION.

CHAPTER FIRST.

GENERAL PROVISIONS.

2183. Prescription is a means of acquiring, or of being discharged, by lapse of time, and subject to conditions established by law.

In positive prescription, title is presumed and confirmed and ownership is transferred to a possessor by the continuance of his possession.

Extinctive or negative prescription is a bar to, and in some cases precludes, any action for the fulfilment of an obligation or the acknowledgment of a right when the creditor has not preferred his claim within the time fixed by law. C. N. 2219.

2184. Prescription cannot be renounced by anticipation. That acquired may be renounced, and so may also the benefit of any time elapsed by which prescription is begun. C. N. 2220; C. C. 2227, 2229.

2185. Renunciation of prescription is express or tacit. Tacit renunciation results from any act by which the abandonment to the right acquired may be presumed. C. N. 2221.

2186. Persons who cannot alienate cannot renounce prescription acquired. C. N. 2222.

2187. Any person interested in the acquiring of a prescription, may set it up although the debtor or the possessor have renounced it. C. N. 2225; C. C. 2229.

2188. The court cannot of its own motion supply the defence resulting from presumption, except in cases where the right of action is denied. C. N. 2223; C. C. 2267.

2189. Prescriptions in respect of immoveable property are governed by the law of the place where it is situated. C. C. 6.

2190. As regards moveable property and personal actions, even in matters of bills of exchange and promissory notes and commercial matters in general, one or more of the following prescriptions may be invoked.

1. Any prescription entirely acquired under a foreign law, when the cause of action did not arise or the debt was not stipulated to be paid in Lower Canada, and such prescription has been so acquired before the possessor or the debtor has his domicile therein.

2. Any prescription entirely acquired in Lower Canada, reckoning from the date of the maturity of the obligation, when the cause of action arose or the debt was stipulated to be paid therein, or the debtor has his domicile therein at the time of such maturity; and in other cases from the time when the debtor and possessor becomes domiciled therein;

3. Any prescription resulting from the lapse of successive periods, in the cases of the two preceding paragraphs, when the first period elapsed under the foreign law. C. C. 6.

2191. Prescriptions commenced according to the law of Lower Canada, are completed according to the same law, without prejudice to the right of invoking those acquired previously under a foreign law, or by a union of periods under both laws, conformably to the preceding article.

CHAPTER SECOND.

OF POSSESSION.

2192. Possession is the detention or enjoyment of a thing or of a right which a person holds or exercises himself, or which is held or exercised in his name by another. C. N. 2228.

2193. For the purposes of prescription, the possession of a person must be continuous and uninterrupted, peaceable, public, unequivocal, and as proprietor. C. N. 3229.

2194. A person is always presumed to possess for himself and as proprietor, if it be not proved that his possession was begun for another.

2195. When possession is begun for another, it is always presumed to continue so, if there be no proof to the contrary.

2196. Acts which are merely facultative or of sufferance cannot be the foundation either of possession or of prescription. C. N. 2232.

2197. Nor, can acts of violence be the foundation of such a possession as avail for prescription. C. N. 2233.

2198. In cases of violence or clandestinity, the possession which avails for prescription begins when the defect has ceased.

Nevertheless the thief, his heirs and successors by universal title, cannot by any length of time prescribe the thing stolen.

Successors by particular title do not suffer from these defects in the possession of previous holders, when their own possession has been peaceful and public. C. N. 2233; C. C. 2168, s. 5.

2199. An actual possessor who proves that he was in possession at a former period is presumed to have possessed during the intermediate time, unless the contrary is proved.—C. N. 2234.

2200. A successor by particular title may join to his possession that of his author in order to complete prescription.

Heirs and other successors by universal title continue the possession of their author, saving the case of interversion of title. C. N. 2233, 2235, 2237; C. C. 2205, 2208.

CHAPTER THIRD.

OF THE CAUSES WHICH HINDER PRESCRIPTION AND SPECIALLY OF PRECARIOUS POSSESSION AND OF SUBSTITUTIONS.

2201. Things which are not objects of commerce cannot be prescribed.

Special provisions explanatory of the present article are to be found in the fourth chapter of this title. C. N. 2226, 2232.

2202. Good faith is always presumed.

He who alleges bad faith must prove it. C. N. 2262, 2268.

2203. Those who possess for another or under acknowledgment of a superior domain, never prescribe the ownership, even by the continuance of their possession after the term fixed.

Thus emphyteutic lessees, tenants, depositaries, usufructuaries and those who hold precariously the property of another cannot acquire it by prescription.

They cannot by prescription liberate themselves from the obligation of paying dues attached to their possession, but the measure of such dues and any arrears thereof are prescriptible.

Emphyteusis, usufruct and other like proprietary rights are susceptible of a distinct ownership and of a possession available for prescription. The proprietor is not hindered by the title which he has granted from prescribing against these rights.

He who has been put in definitive possession of the property of an absentee only begins to prescribe against him or his heirs or legal representatives when such absentee returns or his death becomes known or may be legally presumed. C. N. 2236, 2239; C. C. 101, 102, 2232, s. 4, 2250.

2204. Heirs and successors by universal title of those whom the preceding article hinders from prescribing, cannot themselves prescribe. C. N. 2237.

2205. Nevertheless the persons mentioned in articles 2203 and 2204 and also persons charged with a substitution, may, if a title have been interverted, begin a possession available for prescription dating from the information given to the proprietor by notification or other contradictory acts.

Such notification of title and other contradictory acts only avail when made to or in respect of a person against whom prescription can run. C. N. 2238; C. C. 2200, 2208.

Subsequent purchasers in good faith, under a translatory title derived either from a precarious or subordinate possessor or from any other person, may prescribe by ten years against the proprietor during such subordinate or precarious holding.

Third parties may also, during a subordinate or precarious holding, prescribe against the proprietor by thirty years with or without title. C. N. 2239, 2257. C. C. 2242, 2251 *et s.*

2207. In cases of substitution prescription does not run against the substitute, before the opening of the right, in favor of the institute, nor of his heirs or successors by universal title.

Prescription runs against the substitute before the opening of the right, in favor of third parties, unless he is protected as a minor, or otherwise.

Any substitute, against whom prescription thus runs may bring an action to interrupt it.

The possession of the institute avails the substitute, for the purpose of prescription.

Prescription runs against the institute during the time of his possession and in his favor against third parties.

After the opening, prescription may begin to run in favor of the institute and of his heirs and successors by universal title. C. N. 2241; C. C. 949, 2205.

2208. No one can prescribe against his title, in this sense that no one can change the cause and nature of his own possession, except by interversion. C. N. 2240; C. C. 2200, 2205.

2209. A person may prescribe against his title in the sense that he may be freed by prescription from an obligation he has contracted. C. N. 2241.

2210. Positive prescription by thirty years takes place, for the contents of corporeal immoveables in excess of what is given by the title, and negative prescription takes place by the same time in all cases, in diminution of obligations which the title imposes.

In the matter of dues and rents, the enjoyment of more than the title shows a right to, does not give rise to the acquisition of such excess by prescription. C. C. 1504.

CHAPTER FOURTH.

OF CERTAIN THINGS IMPRESCRIPTIBLE AND OF PRIVILEGED PRESCRIPTIONS.

2211. The crown may avail itself of prescription. The subject may interrupt such prescription by means of a petition of right, apart from the cases in which the law gives another remedy.

Among privileged persons, the privilege takes effect in the matter of prescription. C. N. 2227.

2212. The rights of the crown with regard to sovereignty and allegiance are imprescriptible. C. N. 2226.

2213. Sea-beaches and lands reclaimed from the sea, ports, navigable and floatable rivers, their banks and the wharves, works and roads connected with them, public lands, and generally all immovable property and real rights forming part of the domain of the crown are imprescriptible. C. N. 2226, 538, 540, 541; C. C. 400, 402, 403.

2214. The rights of the crown to the principal of rents, dues, and revenues owing and payable to it, and to the capital sums accruing from the alienation or from the use of crown property, are also imprescriptible.

2215. All arrears of rents, dues, interest and revenues, and all debts and rights, belonging to the crown, not declared to be imprescriptible by the preceding articles, are prescribed by thirty years.

Subsequent purchasers of immovable property charged therewith cannot be liberated by any shorter period. C. N. 2227; C. C. 2250.

2216. Property escheated to the crown by failure of heirs, bastardy of forfeiture is not considered as incorporated or assimilated to the crown domain for purposes of prescription until a declaration to that effect is made, or until after ten years of enjoyment and actual possession, in the name of the crown, of the totality of the rights thus escheated in the particular case.

Until such incorporation or assimilation, such property continues to be subject to the ordinary prescriptions. C. N. 2227; C. C. 35, 401, 606, 637.

2217. Sacred things, so long as their destination has not been changed otherwise than by encroachment, cannot be acquired by prescription.

Burial grounds, considered as sacred things, cannot have their destination changed, so as to be liable to prescription, until the dead bodies, sacred by their nature, have been removed. C. C. 2201.

2218. Positive prescription of corporeal immoveables not sacred, and negative prescription as regards the principal of rents and dues, legacies and rights of hypothec, take place against the church in the same manner and according to the same rules as against private persons.

Purchasers with title and good faith prescribe against the church by ten years, whether positively or negatively, in the same way as against private persons.

Positive prescription of corporeal moveables not sacred, and the other negative prescriptions, including that of capital sums, take place against the church as against private persons. C. N. 2227.

2219. The right to tithes and the rate of the tithe are imprescriptible. Positive prescription by forty years runs between neighboring rectors.

Arrears of tithes can only be demanded for one year.

Tithes must be paid at the rector's residence. R. S. Q. 5850.

2220. Roads, streets, wharves, landing places, squares, markets and other places of a like nature, possessed for the general use of the public cannot be acquired by prescription, so long as their destination has not been changed otherwise than by tolerating the encroachment. C. N. 538, 2227.

2221. Any other property belonging to municipalities or corporations, the prescription of which is not otherwise determined by this code, is subject even when held in mortmain, to the same prescriptions as the property of private persons.

CHAPTER FIFTH.

OF THE CAUSES WHICH INTERRUPT OR SUSPEND

PRESCRIPTION.

SECTION 1.

Of the Causes which Interrupt Prescription.

2222. Prescription may be interrupted either naturally or civilly. C. N. 2242; C. C. 2095, 2255, 2264.

2223. Natural interruption takes place when the possessor is deprived, during more than a year, of the enjoyment of the thing either by the former proprietor or by any one else. C. N. 2243; C. C. 2193, 2199.

2224. A judicial demand in proper form, served upon the person whose prescription it is sought to hinder, or filled and served conformably to the Code of Civil Procedure when a personal service is required, creates a civil interruption.

Seizures, set-off, interventions and oppositions are considered as judicial demands.

No extra-judicial demand, even when made by a notary or bailiff, and accompanied by the titles, or even signed by the party notified, is an interruption, if there be not an acknowledgment of the right. C. N. 2244; C. C. 2211.

2225. A demand brought before a court of incompetent jurisdiction does not interrupt prescription. C. N. 2246.

2226. Prescription is not interrupted:

If the service or the procedure be null from informality;
 If the plaintiff abandon his suit;
 If he allow peremption of the suit to be obtained;
 If the suit be dismissed. C. N. 2247; C. C. 2265.

2227. Prescription is interrupted civilly by renouncing the benefit of a period elapsed and by any acknowledgment which the possessor or the debtor makes of the right of the person against whom the prescription runs. C. N. 2248; C. C. 1229, 1235, s. 1, 2184 *et s.*

2228. A judicial demand brought against the principal debtor, or his acknowledgment, interrupts prescription as regards the surety. The same acts against or by a surety interrupt prescription as regards the principal debtor. C. N. 2250.

2229. Renunciation by any person of a prescription acquired does not prejudice his co-debtors, his sureties or third parties. C. C. 2187.

2230. Every act which interrupts prescription with regard to one of joint and several creditors benefits the others.

When the obligation is indivisible, acts of interruption with regard to some only of the heirs of a creditor benefit the others.

If the obligation be divisible, even when the debt is hypothecary, acts of interruption in behalf of some only of such heirs do not benefit the other heirs.

In the same case these acts only benefit the other joint and several creditors for the share of the heirs with regard to whom such acts have been done.

In order that the interruption should in this case produce the full effect with regard to the other joint and several creditors, it is necessary that the acts which interrupt should have been done as to all the heirs of the deceased creditors. C. N. 1199, 2249; C. C. 1102, 2239.

2231. Every act which interrupts prescription by one of joint and several debtors, interrupts it with regard to all.

Acts of interruption with regard to one of the heirs of a debtor, interrupt prescription with regard to the other heirs and joint and several debtors, when the obligation is indivisible.

If the obligation be divisible, even when the debt is hypothecary, a judicial demand brought against one of the heirs of a joint and several debtor, or his acknowledgment, does not interrupt prescription with regard to the other heirs; without prejudice to the right of the creditor to exercise his hypothec within the proper time on the whole of the immoveable property charged, for that portion of the debt for which he retains his right.

In the same case, these acts only interrupt prescription with regard to the joint and several co-debtors for the share of the heir who is sued or has acknowledged the right. In order that in this case the interruption should take place for the whole with regard to the joint and several co-debtors, it is necessary that the judicial demand or the acknowledgment should take place with regard to all the heirs of the deceased debtor.

Acts which interrupt prescription with regard to the debtor do not interrupt prescription by a third party holding the immoveable property burthened with any charge or hypothec; they affect him in the sense that they hinder the extinction by prescription of the debt to which the hypothec is attached.

These acts against the holders of other immoveables or of other portions of the same immoveable, do not prejudice the hold-

er of a separate portion of the property, with regard to whom they have not taken place.

When done with regard to one joint holder of undivided property they interrupt prescription with regard to the others.

In natural interruption, however, it suffices that one of the possessors of undivided property, or an heir of one of them, should have kept useful possession of the whole in order to secure the advantage of it to the others. C. N. 1206, 2249; C. C. 565, 1110.

SECTION II.

Of the Causes which Suspend the Course of Prescription.

2232. Prescription runs against all persons, unless they are included in some exception established by this code, or unless it is absolutely impossible for them in law or in fact to act by themselves or to be represented by others.

Saving what is declared in article 2269, prescription does not run, even in favor of subsequent purchasers, against those who are not born, nor against minors, idiots, madmen, or insane persons, with or without tutors or curators. Those to whom a judicial adviser is given, and persons interdicted for prodigality, do not enjoy this privilege.

Prescription runs against absentees as against persons present and by the same lapse of time, saving what is declared as to persons authorized to take provisional possession of the estate of the absentee. C. N. 2251; C. C. 101, 102, 106, 566, 2208, 2258.

2233. Husband and wife cannot prescribe against each other. C. N. 2253.

2234. Prescription runs against a married woman, whether separated or in community, with respect to her private property, including her dowry, even when her husband has the administration of it, saving her recourse against her husband. Nevertheless, when the husband is liable as warrantor for having alienated the property of the wife without her consent, and in all cases where the action against the debtor or the possessor would turn against the husband, prescription does not run against the married woman, even in favor of subsequent purchasers. C. N. 2254, 2256.

2235. Neither does prescription run against the wife during marriage, even in favor of subsequent purchasers, with respect to dower and other rights of survivorship, nor with respect to the preciput or other distinct rights which she can only exercise after the dissolution of the community either by accepting or renouncing, unless the community has been dissolved during the marriage; at the time of which dissolution prescription begins against the wife, as regards the rights which she may then exercise in consequence of such dissolution.

Saving what is excepted in the present article, prescription acquired or which has run against the property of the community affects the share of the wife who accepts. C. N. 2255, 2256; C. C. 111, 208, 1322, 1404, 1438, 1449.

2236. Prescription of personal actions does not run:

With respect to debts depending on a condition, until such condition happens;

With respect to action in warranty until the eviction takes place;

With respect to debts with a term until the term has expired. C. N. 2257.

2237. Prescription does not run against a beneficiary heir, with respect to claims he has against the succession. It runs against a vacant succession although there be no curator. C. N. 2258; C. C. 671, s. 2.

2238. It runs during the delays for making an inventory and deliberating. C. N. 2259.

2239. The particular rules concerning the suspension of prescription with regard to joint and several creditors and their heirs are the same as those concerning interruption in like cases, explained in the preceding section. C. C. 2230.

CHAPTER SIXTH.

OF THE TIME REQUIRED TO PRESCRIBE.

SECTION I.

General Provisions.

2240. Prescription is reckoned by days and not by hours.

Prescription is acquired when the last day of the term has expired; the day on which it commenced is not counted. C. N. 2260, 2261.

2241. The rules of prescription in other matters than those mentioned in the present title are explained in the particular titles relating to such matters.

SECTION II.

Of Prescription by Thirty Years, of Prescription of Rents and Interest, and of duration of the Plea of Prescription.

2242. All things, rights and actions the prescription of which is not otherwise regulated by law, are prescribed by thirty years, without the party prescribing being bound to produce any title and notwithstanding any exception, pleading bad faith. C. N. 2262, 475; C. C. 235, 479, 562 *et s.*, 2206, 2255, 2265.

2243. Prescription of the action to account and of the other personal actions of minors against their tutors, relating to the acts of the tutorship, takes place conformably to this rule and is reckoned from the majority.

2244. If a title be shewn, it helps to establish the defects of the possession which hinder prescription.

2245. Prescription by thirty years, has, in all prescriptible cases, the same effects as that by a hundred years or as immemorial prescription formerly had, whether as regards the right, or for covering the defects of title, in formalities or bad faith.

2246. Any person who is in possession as proprietor of a thing or a right, preserves, by reason of such possession, his right to set up by plea against any demand in revendication of such thing or right, all such grounds of nullity or other grounds as tend to defeat the action, although his right to do so by direct action may have been prescribed.

In personal actions likewise, the defendant may effectively plead all grounds tending to defeat the action, although the time during which he could urge such grounds by direct action may have elapsed.

The foregoing provisions of this article apply only to such grounds of exception as strike at the principle of the action and destroyed it at a time when no acquired prescription could prevent them from doing so.

Thus a claim prescribed cannot be pleaded in compensation unless the compensation had taken effect before it was prescribed, and then, it may be pleaded whether the claim be for a debt of a commercial nature or for any other cause.

The adoption of the grounds of such plea does not revive the right to urge them by direct action. C. C. 1188.

2247. The hypothecary action joined to the personal is not subject to a longer prescription than the latter alone. C. N. 2262; C. C. 2017, s. 4.

2248. The term attached by law or by stipulation to a right of redemption is absolute without prescription being required.

So is the term attached to the right of a vendor to take back an immoveable, by reason of non-payment of the price.

The right to redeem rents comes from the law; it is imprescriptible. C. C. 389 *et s.*, 1537, 1548, 1789.

2249. After twenty-nine years from the date of the last title, the debtor of emphyteutic dues or of a rent may be obliged, at his own cost, to furnish the creditor or his legal representatives with a renewal-deed. C. N. 2263.

2250. With the exception of what is due to the crown and interest on judgments, all arrears of rents, including life-rents, all arrears of interest, of house-rent or land-rent, and generally all fruits natural or civil are prescribed by five years. (62 V'ct., c. 51.)

This provision applies to claims resulting from emphyteutic leases or other real rights, even where there is privilege or hypothec.

Prescription of arrears takes place although the principle be imprescriptible by reason of precarious possession.

Prescription of the principal carries with it that of the arrears. C. N. 2277; C. C. 2203, s. 3, 2215, 2267.

SECTION III.

Of Prescription by Subsequent Purchasers.

2251. He who acquires a corporeal immoveable in good faith under a translatory title, prescribes the ownership thereof and liberates himself from the servitudes, charges and hypothecs upon it by an effective possession in virtue of such title during ten years. C. N. 2265; C. C. 1449, 1553, 2193, 2206, 2215, 2218, 2232, s. 2, 2234; 2235, 2269.

2252. A subsequent purchaser of dues or rents with title and in good faith, prescribes the capital thereof by means of an indefinite enjoyment during ten years, against the creditor who has during that time entirely failed to enjoy and neglected to act.

2253. It is sufficient that the good faith of subsequent purchasers existed at the time of the purchase, even when their effective possession only commenced later.

The same rule is observed with regard to every preceding purchaser whose possession is added to theirs for this prescription. C. N. 2269.

2254. A title which is null by reason of informality cannot serve as a ground for prescription by ten years. C. N. 2267.

2255. After prescription by ten years has been repounced or interrupted, prescription by thirty years alone can be commenced. C. C. 2264.

2256. Prescription by ten years and the other lesser prescriptions may be invoked separately against the same demand together with that by thirty years.

2257. In cases where prescription by ten years can run, each new holder of an immoveable burthened with a servitude, charge or hypothec, may be obliged to furnish a renewal-title at his own cost. C. C. 2057.

SECTION IV.

Of certain Prescriptions by Ten Years.

2258. The action in restitution of minors for lesion, the action in rectification of tutors accounts and that in rescission of contracts for error, fraud, violence or fear, are prescribed by ten years.

This time runs in the case of violence or fear from the day it ceased; and in the case of error or fraud from the day it was discovered.

This time only runs with regard to interdicted persons from the day the interdiction is removed, except for prodigals or persons to whom a judicial adviser has been given. It does not run against idiots, madmen and insane persons, although not interdicted. It does not run against minors until they become of age. C. N., 1304; C. C. 2232, 2269.

2259. After ten years, architects and contractors are discharged from the warranty of the work they have done or directed. C. N. 2270; C. C. 1688.

SECTION V.

Of certain Short Prescriptions.

2260. The following actions are prescribed by five years:

1. For professional services and disbursements of advocates and attorneys, reckoning from the date of the final judgment in each case;

2. For professional services and disbursements of notaries and fees of officers of justice, reckoning from the time when they became payable;

3. Against advocates, attorneys, notaries and other officers or functionaries who are depositaries in virtue of their office, for the recovery of papers and titles confided to them; reckoning from the termination of the proceedings in which such papers and titles were made use of, or, in other cases from the date of their reception;

4. Upon inland or foreign bills of exchange, promissory notes, or notes for the delivery of grain or other things, whether negotiable or not, or upon any claim of a commercial nature, reckoning from maturity; this prescription however does not apply to bank notes;

5. Upon sales of moveable effects between non-traders or between traders and non-traders, these latter sales being in all cases held to be commercial matters:

6. For hire of labor or for the price of manual, professional or intellectual work and materials furnished; saving the exceptions contained in the following articles;

7. For visits, services, operations and medicines of physicians or surgeons, reckoning from each service or things furnished. The oath of the physician or surgeon makes proof as to the nature and duration of the services. R. S. Q. 5851; C. N. 2272, 2273, 2276; C. C. 1734, 2267.

2261. The following actions are prescribed by two years:

1. For seduction, or lying in expenses:

2. For damages resulting from offences or quasi-offences, whenever other provisions do not apply;

3. For wages of workmen not reputed domestics and who are hired for a year or more;

4. For sums due schoolmasters and teachers, for tuition, and board and lodging furnished by them. C. C. 2267.

2262. The following actions are prescribed by one year:

1. For slander or libel, reckoning from the day that it came to the knowledge of the party aggrieved;

2. For bodily injuries, saving the special provisions contained in article 1056 and cases regulated by special laws:

3. For wages of domestic or farm servants, merchants' clerks and other employees who are hired by the day, week or month, or for less than a year;

4. For hotel or boarding-house charges. C. N. 1781, 2272; C. C. 2267.

2263. Short limitations and prescriptions established by acts of parliament, follow the rules peculiar to them, as well in matters respecting the rights of the Crown as in those respecting the rights of all others.

2264. After renunciation or interruption, except as to prescription by ten years in favor of subsequent purchasers, prescription recommences to run for the same time as before, if there be no novation, saving the provisions of the following article. C. C. 2255.

2265. Any action which is not declared to be preempted, and any judicial condemnation, constitutes a title which is only prescribed by thirty years, although the subject matter thereof be sooner prescriptible.

A judicial admission interrupts prescription, even in an action the preemption of which is declared or which is otherwise insufficient to interrupt it alone; but the prescription which recommences is not thereby prolonged. C. N. 2244, 2247, 2248; C. C. 2226.

2266. A continuation of like services, work, sales or supplies, does not hinder a prescription, if there have been no acknowledgment or other cause of interruption. C. N. 2274.

2267. In all the cases mentioned in articles 2250, 2260, 2261 and 2262 the debt is absolutely extinguished and no action can be maintained after the delay for prescription has expired. C. N. 2275; C. C. 2188.

2268. Actual possession of a corporeal moveable, by a person as proprietor, creates a presumption of lawful title. Any party claiming such moveable, must prove beside his own right, the defects in the possession or in the title of the possessor who claims prescription, or who, under the provision of the present article, is exempt from doing so.

Prescription of corporeal moveables takes place after the lapse

of three years, reckoning from the loss of possession in favor of possessors in good faith, even when the loss of possession has been occasioned by theft.

This prescription is not, however, necessary to prevent revendication if the thing have been bought in good faith in a fair or market, or at a public sale, or from a trader dealing in similar articles, nor in commercial matters generally; saving the exception contained in the following paragraph.

Nevertheless, so long as prescription has not been acquired, the thing lost or stolen may be revendicated, although it have been bought in good faith in the cases of the preceding paragraph; but the revendication in such cases can only take place upon reimbursing the purchaser for the price which he has paid.

If the thing have been sold under the authority of law, it cannot, in any case, be revendicated.

The stealer or other violent clandestine possessor of a thing, and his successors by general title, are debarred from prescribing by articles 2197 and 2198. C. N. 2279, 2280; C. C. 1488, 1489, 1490; C. C. P. 668.

2269. Prescriptions which the law fixes at less than thirty years, other than those in favor of subsequent purchasers of immoveables with title and in good faith, and that in case of rescission of contracts mentioned in article 2258, run against minors, idiots, madmen and insane persons, whether or not they have tutors or curators, saving their recourse against the latter. C. N. 2278; C. C. 2232.

SECTION VI.

Transitory Provisions.

2270. Prescriptions begun before the promulgation of this code, must be governed by the former laws.

Nevertheless prescriptions then begun, for which, according to these laws, an immemorial duration or one of a hundred years is required, are acquired without respect to such necessity.

Trustees, Executors and Administrators, Trustee Relief Act, Investment by Trustees.

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BRITISH COLUMBIA

, R. S. B. C., 1897., CHAP. 187.

An Act respecting the Powers and Duties of Trustees and Executors; the appointment of new Trustees; for better securing Trust Funds; for the relief of Trustees; and to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property vested in Mortgagees and Trustees.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as the “Trustees and Executors Act.” C. A. 1888, c. 115, s. 1.

PRELIMINARY.

2. Application of Act.—Except as hereinafter provided, the provisions contained in this Act shall extend to persons entitled or acting under a deed, will, codicil, or other instrument executed before or after the passing of this Act. C. A. 1888, c. 115, s. 2.

INTERPRETATION.

3. Interpretation clause.—The several words hereinafter named are herein used and applied in the manner following respectively, that is to say:—

“**Lands.**”—The word “lands” shall extend to and include manors, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein;

“**Stocks.**”—The word “stock” shall mean any fund, annuity, or security transferable in books kept by any company or society established or to be established, or transferable by deed alone, or by deed accompanied by other formalities, and any share or interest therein:

“**Seised.**”—The word “seised” shall be applicable to any vested estate for life or of a greater description, and shall extend to estates at law and in equity, in possession or in futurity, in any land:

“**Possessed.**”—The word “possessed” shall be applicable to any vested estate less than a life estate, at law or in equity, in possession or in expectancy, in any lands:

“**Contingent right.**”—The words “contingent right,” as applied to lands, shall mean a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent:

“**Convey**” and “**conveyance.**”—The words “convey” and “conveyance,” applied to any person, shall mean the execution by such person of every necessary or suitable assurance for conveying or

disposing to another lands whereof such person is seised or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance, including the acts to be performed by married women (in accordance with the provisions of the "Land Registry Act"), and tenants in tail in accordance with the provisions of the Act intituled "An Act for the Abolition of Fines and Recoveries, and the Substitution of more simple Modes of Assurance;"

"Assign" and "assignment."—The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed or for any less estate:

"Transfer."—The word "transfer" shall mean the execution and performance of every deed and act by which a person entitled to stock can transfer such stock from himself to another.

"Supreme Court."—The words "Supreme Court" shall mean the Supreme Court of British Columbia:

"Judge."—The words "Judge" or "Judge of said Supreme Court" shall mean and include any of Her Majesty's Justices of the Supreme Court;

"Trust."—The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but with this exception, the words "trust" and "trustee" shall extend to and include implied and constructive trusts, and shall extend to and include cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person:

"Lunatic."—The word "lunatic" shall mean any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo*:

"Person of unsound mind."—The expression "person of unsound mind" shall mean any person, not an infant, who, not having been found to be a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs:

"Devisee."—The word "devisee" shall, in addition to its ordinary signification, mean the heir of a devisee and the devisee of an heir, and generally any person claiming an interest in the lands of a deceased person, not as heir of such deceased person, but by a title dependent solely upon the operation of the laws concerning devise and descent:

"Decree."—The word "decree" shall mean or be equivalent to the word judgment:

"Mortgage."—The word "mortgage" shall be applicable to every estate, interest, or property in lands or personal estate which would in a Court of Equity be deemed merely a security for money.

POWERS OF TRUSTEES AND EXECUTORS.

4. Receipts of trustees.—The receipts in writing of any trustees or trustee for any money payable to them or him, by reason or in the exercise of any trusts or powers reposed or vested in them or him, shall be sufficient discharges for the money therein express-

ed to be received, and shall effectually exonerate the persons paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof. C. A. 1888, c. 115, s. 3.

5. Purchaser not to be bound to see to the application of purchase money.—The *bona fide* payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security. C. A. 1888, c. 115, s. 4.

6. Devisee in trust may raise money by sale notwithstanding want of express power in the will.—Where by any will which has or shall come into operation after the twenty-first day of March, 1881, the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trust actually declared by the testator, to raise such debts, legacy, or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper. C. A. 1888, c. 115, s. 5.

7. Powers given by last section extended to survivors, devisees, etc.—The power conferred by the last preceding section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the will, or by any court having jurisdiction, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. C. A. 1888, c. 115, s. 6.

8. Executors to have power of raising money, etc., where there is no sufficient devise.—If any testator who shall have created such a charge as is described in the sixth section shall not have devised the hereditaments charged as aforesaid on such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executors shall for the time being be vested; but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate. C. A. 1888, c. 115, s. 7.

9. Sections 6, 7, and 8 not to affect certain sales, etc., nor to extend to devisees in fee or in tail.—The provisions contained

in the three last preceding sections shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any will coming into operation before the twenty-fifth day of March, 1881, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do. C. A. 1888, c. 115, s. 8.

10. Purchasers, etc., not bound to inquire as to powers.—Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the three last mentioned sections, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof. C. A. 1888, c. 115, s. 9.

INVESTMENT OF TRUST FUNDS.

11. Investment of trust funds by trustees.—Trustees having trust money in their hands, which it is their duty to invest at interest or in the purchase of real estate, shall be at liberty, at their discretion, to invest the same in any of the Parliamentary stocks or public funds of Great Britain or Canada, or in Dominion or Provincial Government securities, or Municipal debentures, the interest and payment whereof is guaranteed by Government, or on mortgage of real estate; and such trustees shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same on any such securities than as aforesaid, and also from time to time, at their discretion, to vary any such investments as aforesaid for others of the same nature: Provided always, that no such original investment as aforesaid, and no such change of investment as aforesaid, shall be made where there is a person under no disability entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, without the consent in writing of such person. C. A. 1888, c. 115, s. 10.

MAINTENANCE OF INFANTS.

12. In case property held in trust for infant, trustees may apply income for maintenance of infant.—In all cases where any property is held by trustees in trust for an infant, either absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event previously to his attaining that age, it shall be lawful for such trustees, at their sole discretion, to pay to the guardians (if any) of such infant, or otherwise to apply for or towards the maintenance or education of such infant, the whole or any part of the income to which such infant may be entitled in respect of such property, whether there be any fund applicable to the same purpose or any other person bound by law to provide for such maintenance or education or not, and such trustees shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in proper securities, for the benefit of the person who shall ultimately become entitled to the property from which such accumulation shall have arisen: Provided al-

ways, that it shall be lawful for such trustees at any time, if it shall appear to them expedient, to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year. C. A. 1888, c. 115, s. 11.

13. Property held in trust for infant may be sold by leave of a Judge, and proceeds thereof applied for maintenance and education of such infants.—Application and investment of moneys so realized.—In all cases where any property, either real or personal, is held by trustees in trust for an infant, either absolutely or contingently on his attaining the age of twenty-one years, or on the occurrence of any event previously to his attaining that age, and where the income arising from such property is insufficient for the maintenance and education of such infant, it shall be lawful for trustees, by leave of a Judge of the Supreme Court to be obtained in a summary manner, to sell and dispose of any portion of such real or personal property, and to pay to the guardians (if any) of such infant, or otherwise to apply for or towards the maintenance or education of such infant, the whole or any part of the money to arise from such sale as aforesaid; and in the event of the whole of the money arising from any sale of the real or personal property as aforesaid not being immediately required for the maintenance and education of such infant, then the said trustees shall invest the surplus moneys, and the resulting income therefrom, from time to time in proper securities, and shall apply such moneys, and the proceeds thereof, from time to time for the education and maintenance of the said infant, and shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of such infant as aforesaid for the benefit of the person who shall ultimately become entitled to the property from which such moneys and interest have arisen. C. A. 1888, c. 115, s. 12.

14. Conveyance and receipt of trustees to give the purchaser a good title.—Upon any sale made in pursuance of the last preceding section, the deed of conveyance duly executed by and the receipt for the purchase money duly signed by the said trustees shall convey a good title to the purchaser of the property to be conveyed, and shall effectually exonerate the person paying such money from seeing to the application thereof, or from being answerable for any loss or misapplication thereof. C. A. 1888, c. 115, s. 13.

APPOINTMENT OF NEW TRUSTEES.

15. Power to the Court to appoint new trustees where there is no existing trustee.—In all cases where it shall be expedient to appoint a new trustee, and it shall be bound inexpedient, difficult, or impracticable so to do without the assistance of the said Supreme Court, it shall be lawful for the said court to make an order appointing a new trustee or new trustees, whether there be any existing trustee or not at the time of making such order and either in substitution for or in addition to any existing trustee or trustees. 15 and 16 Vict. (Imp.) c. 55, s. 9.

16. The new trustees to have the powers of trustees appointed by decrees in suits.—The person or persons who, upon the making of such order as last aforesaid, shall be trustee or trustees, shall have all the same rights and powers as he or they would have had if appointed by a decree or judgment in a suit or action. 13 and 14 Vict. (Imp.), c. 60, s. 33.

17. Power to Court to vest lands in new trustees.—It shall be lawful for the Supreme Court, upon making any order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to direct that any lands subject to the trust shall vest in the person or persons who upon the appointment shall be the trustee or trustees for such estate as the court shall direct; and such order shall have the same effect as if the person or persons who before such order was or were the trustee or trustees (if any) had duly executed all proper conveyances of such lands for such estate. 13 and 14 Vict. (Imp.), c. 60, s. 34.

18. Power to Court to vest right, to call for transfer of stock, or recover chose in action in new trustees.—It shall be lawful for the Supreme Court, upon making an order for appointing a new trustee or new trustees, either by the same or by any subsequent order, to vest the right to call for a transfer of any stock subject to the trust, or to receive the dividends or income thereof, or to sue for or recover any chose in action, subject to the trust, or any interest in respect thereof, in the person or persons who upon the appointment shall be the trustee or trustees. 13 and 14 Vict. (Imp.), c. 60, s. 35.

19. Appointment of new trustees how made.—Whenever any trustee, either original or substituted, and whether appointed by the Supreme Court or otherwise, shall lie or desire to be discharged from, or refuse, or become unfit or incapable to act in the trusts or powers in him reposed, before the same shall have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed or will or other instrument creating the trust (if any), or if there be no such person, or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor, or administrators or administrator of the last surviving and continuing trustee, or the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying or desiring to be discharged, or refusing, or becoming unfit or incapable to act aforesaid; and so often as any new trustee or trustees shall be so appointed as aforesaid, all the trust property (if any) which for the time being shall be vested in the surviving or continuing trustees or trustee, or in the heirs, executors, or administrators of any trustee, shall, with all convenient speed, be conveyed, assigned and transferred, so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees or trustee as the case may be require; and every new trustee or trustees to be appointed as aforesaid, as well before as after such conveyance or assignment as aforesaid, and also every trustee appointed by the Supreme Court, either before or after the passing of this Act, shall have the same powers, authorities, and directions, and shall in all respects act as if he had been originally nominated a trustee by the deed, will, or other instrument creating the trust. C. A. 1888, c. 115, s. 14.

20. Appointment where trustee nominated in a will has died in testator's lifetime.—The power of appointing new trustees hereinbefore contained may be exercised in cases where a trustee nominated in a will has died in the lifetime of the testator. C. A., 1888, c. 115, s. 15.

21. Power to appoint new trustees in lieu of persons convicted of felony.—When any person is or shall be jointly or solely

seised or possessed of any lands, or entitled to any stock upon any trust, and such person has been or shall be convicted of an indictable offence, it shall be lawful for the said Supreme Court, upon proof of such conviction, to appoint any person to be a trustee in the place of such convict and to make an order for vesting such lands, or the right to transfer such stock, and to receive the dividends or income thereof, in such person to be so appointed trustee; and such order shall have the same effect as to lands as if the convict trustee had been free from any disability, and had duly executed a conveyance or assignment of his estate and interest in the same. 15 and 16 Vict. (Imp.), c. 55, s. 8.

22. Old trustees not to be discharged from liability.—Any such appointment by the court of new trustees, and any such conveyance, assignment, or transfer as aforesaid, shall operate no further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have done. 13 and 14 Vict. (Imp.), c. 60, s. 36.

23. Who may apply.—An order under any of the hereinbefore contained provisions for the appointment of a new trustee or trustees, or concerning any lands, stock, or chose in action subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage. 13 and 14 Vict. (Imp.), c. 60, s. 37.

ADMINISTRATION AND DISTRIBUTION.

24. Payment of debts by executors.—It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition, or any security, real or personal, for any debts due to the deceased, and to allow any time for payment of any such debts as they shall think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased; and for any of the purposes aforesaid to enter into, give, and execute such agreements, instruments of composition, releases, and other things as they shall think expedient, without being responsible for any loss to be occasioned thereby. C. A., 1888, c. 115, s. 16.

24a. If claim is rejected and notice given an action must be brought within a certain period.—In case the executor or administrator gives notice in writing referring to this section, and of his intention to avail himself thereof, to any creditor or any person of whose claims against the estate he had notice, or to the attorney or agent of such creditor or other person, that he, the executor or administrator, rejects or disputes the claim, it shall be the duty of the claimant to commence his action in respect of the claim within six months after the notice is given, in case the debt, or some part thereof, is due at the time of the notice, or within six months of the time the debt, or some part thereof, falls due, if no part thereof is due at the time of the notice and in default, the claim shall be forever barred. (Added by 62 Vict., c. 76, s. 2.)

25. As to liability of executor or administrator in respect of rents, covenants, or agreements.—Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect to any fixed or ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or person to or amongst whom the said assets may have been distributed. C. A., 1888, c. 115, s. 17.

26. Assignees, etc., after due notice given, may distribute assets without liability to creditors, etc., having claims of which no notice has been received.—Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or a particular class or classes of creditors when the creditors are not designated by name therein, or an executor, or an administrator, has given such or the like notices as in the opinion of the court in which such trustees, assignee, or executor, or administrator is sought to be charged would have been given by the Supreme Court of British Columbia in a suit for the execution of the trusts of such deed or assignment, or an administration suit (as the case may be), for creditors and others, to send in to such trustee, assignee, executor or administrator their claims against the person for the benefit of the creditors of whom such deed or assignment is made, or the estate of the testator or intestate (as the case may be), such trustee, assignee, executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the proceeds of the trust estate or the assets of the testator or intestate (as the case may be), or any part thereof amongst the parties entitled thereto, having regard to the claims of which such trustee, assignee, executor or administrator has then notice, and shall not be liable for the proceeds of the trust estate or assets (as the case may be), or any part thereof, so distributed to any person of whose claim such trustee, assignee, executor or administrator had not notice at the time of the distribution thereof, or a part thereof (as the case may be); but nothing in this Act contained shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate, or assets (as the case may be), or any part there-

of, into the hands of the person or persons who may have received the same respectively. C. A. 1888, c. 115, s. 18.

27. Trustees may pay trust moneys or transfer stocks and securities into the Supreme Court.—New section substituted by 5 Edw. VII., c. 51, s. 2, *infra*.

28. Supreme Court to make orders on petition, without bill, for application of trust moneys and administration of trust.—Such orders as shall seem fit shall be from time to time made by the said Supreme Court in respect of the trust moneys, stocks, or securities so paid in, transferred, and deposited as aforesaid, and for the investment and payment of any such moneys, or of any dividends or interest on any such stocks or securities, and for the transfer and delivery out of any such stocks and securities, and for the administration of any such trusts generally, upon a petition to be presented in a summary way to any Judge of the said court, by such party or parties as to the court shall appear to be competent and necessary in that behalf, and service of such petition shall be made upon such person or persons as the court shall see fit and direct; and every order made upon any such petition shall have the same authority and effect, and shall be enforced and subject to re-hearing and appeal, in the same manner as if the same had been made in an action regularly instituted in the said court; and if it shall appear that any such trust funds cannot be safely distributed without the institution of an action, the said Supreme Court or a Judge may direct any such action to be instituted. 10 and 11 Vict. (Imp.), c. 96, s. 1.

29. Supreme Court may, upon application by majority of trustees, etc., order payment or transfer of trust moneys, stocks, or securities into Supreme Court.—If upon any petition presented to a Judge of the Supreme Court in the matter of this Act, it shall appear to the Judge before whom such petition shall be heard that any moneys, annuities, stocks, or securities are vested in any persons as trustees, executors, or administrators, or otherwise, upon trusts within the meaning of this Act, and that the major part of such persons are desirous of paying such moneys into court, or of transferring or delivering such annuities, stocks, or securities to or into the name of the Accountant of said Supreme Court, under the provisions of this Act, but that for any reason the concurrence of the other or others of them cannot be had, it shall be lawful for such Judge as aforesaid to order and direct such transfer, payment or delivery to be made by the major part of such persons without the concurrence of the other or others of them; and where any such moneys or government or parliamentary securities shall be deposited with any banker, broker, or other depository, it shall be lawful for such Judge as aforesaid to make such order for the payment or delivery of such moneys, government or parliamentary securities, to the major part of such trustees, executors, administrators, or other persons as aforesaid, for the purpose of being paid into court, transferred or delivered to or into the name of the Accountant of the Supreme Court as to the said Judge shall seem meet; and every transfer of any annuities, stocks, or securities, and every payment of money or delivery of securities in pursuance of any such order, shall be as valid and effectual as if the same had been made on the authority or by the act of all the persons entitled to the annuities, stocks or securities so transferred, or the moneys or securities so paid or delivered respectively, and shall fully protect and indemnify all bodies corporate or persons acting under or in pursuance of such order. 12 and 13 Vict. (Imp.), c. 74, s. 1.

POWER TO DEAL WITH INTEREST OF LUNATIC OR INFANT,
TRUSTEE OR MORTGAGEE.

30. A Judge of the Supreme Court may convey estates of lunatic trustees and mortgagees.—When any lunatic or person of unsound mind shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for a Judge of the said Supreme Court to make an order that such lands be vested in such person or persons in such manner and for such estate as he shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 3.

31. May convey contingent rights.—When any lunatic or person of unsound mind shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, it shall be lawful for a Judge of the said Supreme Court to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said Judge shall direct; and the order shall have the same effect as if the trustee or mortgagee had been sane, and had duly executed a deed so releasing or disposing of the contingent right. 13 and 14 Vict. (Imp.), c. 60, s. 4.

32. Court may transfer stock of lunatic trustees and mortgagees.—When any lunatic or person of unsound mind shall be solely entitled to any stock or to any chose in action upon any trust or by way of mortgage, it shall be lawful for a Judge of the said Supreme Court to make an order vesting in any person or persons the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof; and when any person or persons shall be entitled jointly with any lunatic or person of unsound mind to any stock or chose in action upon any trust or by way of mortgage, it shall be lawful for any such Judge to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any other person or persons the said Judge may appoint. 13 and 14 Vict. (Imp.), c. 60, s. 5.

33. Power to transfer stock of deceased person whose personal representative is a lunatic.—When any stock shall be standing in the name of any deceased person whose personal representative is a lunatic or person of unsound mind, or when any chose in action shall be vested in any lunatic or person of unsound mind as the personal representative of a deceased person, it shall be lawful for a Judge of the said Supreme Court to make an order vesting the right to transfer such stock or to receive the dividends or income thereof, or to sue for and recover such chose in action or any interest in respect thereof, in any person or persons he may appoint. 13 and 14 Vict. (Imp.), c. 60, s. 6.

34. Power to make an order for the transfer or receipt of dividends of stock in name of an infant trustee.—When any infant shall be solely entitled to any stock upon any trust, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting in any person or persons the right to trans-

fer such stock, or to receive the dividends or income thereof; and when any infant shall be entitled jointly with any other person or persons to any stock upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, either in the person or persons jointly entitled with the infant, or in him or them together with any other person or persons the said court may appoint. 15 and 16 Vict. (Imp.), c. 55, s. 3

35. Supreme Court may convey estates of infant trustees and mortgagees.—Where any infant shall be seised or possessed of any lands upon any trust or by way of mortgage, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting such lands in such person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the infant trustee or mortgagee had been twenty-one years of age, and had duly executed a conveyance or assignment of the lands in the same manner for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 7.

36. Contingent rights of infant trustees and mortgagees.—Where any infant shall be entitled to any contingent right in any lands upon any trust or by way of mortgage, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the infant had been twenty-one years of age, and had duly executed a deed so releasing or disposing of the contingent right. 13 and 14 Vict. (Imp.), c. 60, s. 8.

37. Moneys of infants and persons of unsound mind to be paid into Court.—Where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands, stock, or chose in action conveyed, assigned, or transferred under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the said Supreme Court, under and pursuant to the rules of the said court in that behalf, in trust in any cause then depending concerning such money, or, if there shall be no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said court; and it shall be lawful for the said court, upon petition in a summary way, to order any money so paid to be invested, and to order payment or distribution thereof, or payment of the dividends thereof, as to the said court shall seem reasonable; and every officer of the said court who shall receive any such money is hereby required to give to the person paying the same a receipt for such money, and such receipt shall be an effectual discharge for the money therein respectively expressed to have been received. 13 and 14 Vict. (Imp.), c. 60, s. 48.

**POWER TO DEAL WITH INTEREST OF TRUSTEE OR MORTGAGEE WHO IS OUT OF THE JURISDICTION, OR
NEGLECTS OR REFUSES TO ACT.**

38. Court may convey the estate of a trustee out of the jurisdiction of the Court.—When any person solely seised or possessed of any lands upon any trust shall be out of the jurisdiction of the said Supreme Court, or cannot be found, it shall be law-

ful for the said court, or a Judge thereof, to make an order vesting such lands in such person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands in the same manner and for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 9.

39. Court may make order in cases where parties are seised of lands jointly with parties out of jurisdiction of Court, etc.—When any person or persons shall be seised or possessed of any lands jointly with a person out of the jurisdiction of the said Supreme Court or who cannot be found, it shall be lawful for the said court, or a Judge thereof, to make an order vesting the lands in the person or persons so jointly seised or possessed, or in such last-mentioned person or persons together with any other person or persons, in such manner and for such estate, as the said court shall direct; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance or assignment of the lands in the same manner for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 10.

40. Contingent rights of trustees.—When any person solely entitled to a contingent right in any lands upon any trust shall be out of the jurisdiction of the said Supreme Court, or cannot be found, it shall be lawful for the said court, or a Judge thereof, to make an order wholly releasing such lands from such contingent right, or disposing of the same to such person or persons as the said court shall direct; and the order shall have the same effect as if the trustee had duly executed a conveyance so releasing or disposing of the contingent right. 13 and 14 Vict. (Imp.), c. 60, s. 11.

41. Court may make order in cases where persons are jointly entitled with others out of the jurisdiction of the Court to a contingent right in lands.—When any person jointly entitled with any other person or persons to a contingent right in any lands upon any trust shall be out of the jurisdiction of the said Supreme Court, or cannot be found, it shall be lawful for the said court, or a Judge thereof, to make an order disposing of the contingent right of the person out of the jurisdiction, or who cannot be found, to the person or persons so jointly entitled as aforesaid, or to such last-mentioned person or persons together with any other person or persons; and the order shall have the same effect as if the trustee out of the jurisdiction, or who cannot be found, had duly executed a conveyance so releasing or disposing of the contingent right. 13 and 14 Vict. (Imp.), c. 60, s. 12.

42. When it is uncertain which of several trustees was the survivor.—Where there shall have been two or more persons jointly seised or possessed of any lands upon any trust, and it shall be uncertain which of such trustees was the survivor, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting such lands in such person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the survivor of such trustees had duly executed a conveyance or assignment of the lands in the same manner for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 13.

43. When it is uncertain whether the last trustee be living or dead.—Where any one or more person or persons shall have been seised or possessed of any lands upon any trust, and it

shall not be known, as to the trustee last known to have been seised or possessed, whether he be living or dead, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting such lands in such person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the last trustee had duly executed a conveyance or assignment of the lands in the same manner for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 14.

44. When trustee dies without an heir.—When any person seised of any lands upon any trust shall have died intestate as to such lands without an heir, or shall have died and it shall not be known who is his heir or devisee, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting such lands in such person or persons, in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the heir or devisee of such trustees had duly executed a conveyance of the lands in the same manner and for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 15.

45. Contingent right of unborn trustee.—When any lands are subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence, would, in respect thereof, become seised or possessed of such lands upon any trust, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order which shall wholly release and discharge such lands from such contingent right in such unborn person, or class of unborn persons, or to make an order which shall vest in any person or persons the estate or estates which such unborn person, or class of unborn persons, would, upon coming into existence, be seised or possessed of in such lands. 13 and 14 Vict. (Imp.), c. 60, s. 16.

46. Power to make an order for vesting the estate, on refusal or neglect of a trustee to convey or release.—In every case where any person is or shall be jointly or solely seised or possessed of any lands or entitled to a contingent right therein upon any trust, and a demand shall have been made upon such trustee by a person entitled to require a conveyance or assignment of such lands, or a duly authorised agent of such last-mentioned person, requiring such trustee to convey or assign the same or to release such contingent right, it shall be lawful for the said Supreme Court, or a Judge thereof, if the said court or such Judge shall be satisfied that such trustee has wilfully refused or neglected to convey or assign the said lands for the space of twenty-eight days after such demand, to make an order vesting such lands in such person, in such manner and for such estate as the court shall direct, or releasing such contingent right in such manner as the court shall direct; and the said order shall have the same effect as if the trustee had duly executed a conveyance or assignment of the lands, or a release of such right, in the same manner and for the same estate. 15 and 16 Vict. (Imp.), c. 55, s. 2.

47. Court may make a decree in the absence of a trustee.—Where, in any suit commenced or to be commenced in the said Supreme Court, it shall be made to appear to the court, by affidavit, that diligent search and inquiry has been made after any person made a defendant, who is only a trustee, to serve him with the process of the court, and that he cannot be found, it shall be lawful for the said court to hear and determine such cause, and to make such

absolute decree therein against every person who shall appear to them to be only a trustee, and not otherwise concerned in interest in the matter in question, in such and the same manner as if such trustee had been duly served with the process of the court, and had appeared and filed his answer thereto, and had also appeared by his counsel and solicitor at the hearing of such cause: Provided always, that no such decree shall bind, affect, or in anywise prejudice any person against whom the same shall be made, without service of process upon him as aforesaid, his heirs, executors, or administrators, for or in respect of any estate, right, or interest which such person shall have at the time of making such decree for his own use or benefit, or otherwise than as a trustee as aforesaid. 13 and 14 Vict. (Imp.), c. 60, s. 49.

48. Power to convey in place of mortgagee.— When any person to whom any lands have been conveyed by way of mortgage shall have died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of such mortgage shall have been paid to a person entitled to receive the same, or such last-mentioned person shall consent to an order for the reconveyance of such lands, then in any of the following cases it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting such lands in such person or persons in such manner and for such estate as the said court shall direct (that is to say).—

When an heir or devisee of such mortgagee shall be out of the jurisdiction of the said Supreme Court, or cannot be found:

When an heir or devisee of such mortgagee shall, upon a demand by a person entitled to require a conveyance of such lands or a duly authorised agent of such last-mentioned person, have stated in writing that he will not convey the same, or shall not convey the same for the space of twenty-eight days next after a proper deed for conveying such lands shall have been tendered to him by a person entitled as aforesaid, or a duly authorized agent of such last-mentioned person:

When it shall be uncertain which of several devisees of such mortgagee was the survivor:

When it shall be uncertain as to the survivor of several devisees of such mortgagee, or as to the heir of such mortgagee, whether he be living or dead:

When such mortgagee shall have died intestate as to such lands, and without an heir, or shall have died and it shall not be known who is his heir or devisee:

And the order of the said Supreme Court made in any one of the foregoing cases shall have the same effect as if the heir or devisee or surviving devisee, as the case may be, had duly executed a conveyance or assignment of the lands in the same manner and for the same estate. 13 and 14 Vict. (Imp.), c. 60, s. 19.

49. Power to appoint a person to convey in certain cases.— In every case where the said Supreme Court, or a Judge thereof, shall, under the provisions of this Act, be enabled to make an order having the effect of a conveyance or assignment of any lands, or having the effect of a release or disposition of the contingent right of any person or persons, born or unborn, it shall also be lawful for the said court or a judge thereof, as the case may be, should it be deemed more convenient, to make an order appointing a person to convey or assign such lands, or release or dispose of such con-

tingent right; and the conveyance or assignment, or release or disposition, of the person so appointed, shall, when in conformity with the terms of the order by which he is appointed, have the same effect in conveying or assigning the lands, or releasing or disposing of the contingent right, as an order of the said Supreme Court would in the particular case have had under the provisions of this Act; and in every case where the said court shall, under the provisions of this Act, be enabled to make an order vesting in any person or persons the right to transfer any stock of any corporation, joint stock company, or incorporated society, it shall also be lawful for the said Supreme Court, or a judge thereof, if it be deemed more convenient, to make an order directing the Registrar or one of the District Registrars of the said Supreme Court at once to transfer or join in transferring the stock to the person or persons to be named in the order; and this Act shall be a full and complete indemnity and discharge to all persons for all acts done or permitted to be done pursuant thereto. 13 and 14 Vict. (Imp.), c. 60, s. 20.

50. On neglect to transfer stock for 28 days order may be made vesting right to transfer in such person as the Court shall appoint.—Where any person shall neglect or refuse to transfer any stock or to receive the dividends or income thereof, or to sue for or recover any chose in action, or any interest in respect thereof, for the space of twenty-eight days next after an order of the said Supreme Court for that purpose shall have been served upon him, it shall be lawful for the said court to make an order vesting all the right of such person to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said court may appoint. 15 and 16 Vict. (Imp.), c. 55, s. 4.

51. On like neglect by executor similar order may be made.—When any stock shall be standing in the sole name of a deceased person, and his personal representative shall refuse or neglect to transfer such stock or receive the dividends or income thereof for the space of twenty-eight days next after an order of the said Supreme Court for that purpose shall have been served upon him, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said court may appoint. 15 and 16 Vict. (Imp.), c. 55, s. 5.

52. When trustee of stock out of the jurisdiction.—When any person or persons shall be jointly entitled with any person out of the jurisdiction of the said Supreme Court, or who cannot be found, or concerning whom it shall be uncertain whether he be living or dead, to any stock or chose in action upon any trust, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last-mentioned person or persons together with any person or persons the said court may appoint; and when any sole trustee of any stock or chose in action shall be out of the jurisdiction of the said court, or cannot be found, or it shall be uncertain whether he be living or dead, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover

such chose in action, or any interest in respect thereof, in any person or persons the said court may appoint. 13 and 14 Vict. (Imp.), c. 60, s. 22.

53. When trustee of stock refuses to transfer.—Where any sole trustee of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action, or any interest in respect thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person absolutely entitled thereto, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting the sole right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof, in such person or persons as the said court may appoint. 13 and 14 Vict. (Imp.), c. 60, s. 23.

54. When one of several trustees of stock refuses to transfer or receive and pay over dividends.—Where any one of the trustees of any stock or chose in action shall neglect or refuse to transfer such stock, or to receive the dividends or income thereof, or to sue for or recover such chose in action according to the directions of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him or her by such person, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, in the other trustee or trustees of the said stock or chose in action, or in any person or persons whom the said court may appoint jointly with such other trustee or trustees. 13 and 14 Vict. (Imp.), c. 60, s. 24.

55. When stock is standing in the name of a deceased person.—When any stock shall be standing in the sole name of a deceased person and his or her personal representative shall be out of the jurisdiction of the said Supreme Court, or cannot be found, or it shall be uncertain whether such personal representative be living or dead, or such personal representative shall neglect or refuse to transfer such stock, or receive the dividends or income thereof, according to the direction of the person absolutely entitled thereto, for the space of twenty-eight days next after a request in writing for that purpose shall have been made to him by the person entitled as aforesaid, it shall be lawful for the said Supreme Court, or a Judge thereof, to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, in any person or persons whom the said court may appoint. 13 and 14 Vict. (Imp.), c. 60, s. 25.

56. Effect of an order vesting the legal right to transfer stock.—Where any order shall have been made under any of the provisions of this Act vesting the right to any stock in any person or persons appointed by the said Supreme Court, or a Judge thereof, such legal right shall vest accordingly, and thereupon the person or persons so appointed are hereby authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, or relating to the receipt of the dividends thereof, to the extent and in conformity with the terms of such order;

and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such person or persons so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the requisitions of the person in whose place such appointment shall have been made, and shall be equally indemnified in complying with the requisition of such person or persons so appointed as they would have been indemnified in complying with the requisition of the person in whose place such appointment shall have been made; and after notice in writing of any such order of the said Supreme Court, or a Judge thereof, concerning any stock, shall have been given, it shall not be lawful for any company or association whatever, or any person having received such notice, to act upon the requisition of the person in whose place an appointment shall have been made in any matter whatever relating to the transfer of such stock, or the payment of the dividends or produce thereof. 13 and 14 Vict. (Imp.), c. 60, s. 26.

57. Effect of an order vesting legal right in a chose in action.—Where any order shall have been made under the provisions of this Act, by the said Supreme Court, or a Judge thereof, vesting the legal right to sue for or recover any chose in action or any interest in respect thereof, in any person or persons, such legal right shall vest accordingly, and thereupon it shall be lawful for the person or persons so appointed to carry on, commence, and prosecute, in his or their own name or names, any action, suit, or other proceeding at law or in equity for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for or recovered such chose in action. 13 and 14 Vict. (Imp.), c. 60, s. 27.

JURISDICTION AND PROCEDURE.

58. When a decree is made for sale of real estate for payment of debts.—Whenever the said Supreme Court shall direct or directs the sale of any lands for the payment of the debts of a deceased person, every person seised or possessed of such lands, or entitled to a contingent right therein, as an heir, or under the will of such deceased debtor, shall be deemed to be so seised or possessed or entitled, as the case may be, upon a trust within the meaning of this Act; and the said court is hereby empowered to make an order wholly discharging the contingent right, under the will of such deceased debtor, of any unborn person. 13 and 14 Vict. (Imp.), c. 60, s. 29.

59. Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn.—Where any decree shall be made by the said Supreme Court for the specific performance of a contract concerning any lands, or for the partition or exchange of any lands, or generally when any decree shall be made for the conveyance or assignment of any lands, either in cases arising out of the doctrine of election or otherwise, it shall be lawful for the said court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof, within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary set-

tlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and thereupon it shall be lawful for the said Supreme Court to make such order or orders, as to the estates, rights, and interests of such persons, born or unborn, as the said court might under the provisions of this Act make concerning the estates, rights, and interests of trustees born or unborn. 13 and 14 Vict. (Imp.), c. 60, s. 30.

60. Power to make directions how the right to transfer stock to be exercised.—It shall be lawful for the said Supreme Court to make declarations and give directions concerning the manner in which the right to any stock or chose in action vested under the provisions of this Act shall be exercised; and thereupon the person or persons in whom such rights shall be vested shall be compellable to obey such directions and declarations by the same process as that by which other orders under this Act are enforced. 13 and 14 Vict. (Imp.), c. 60, s. 31.

61. Power to present petition in the first instance.—Any person entitled in manner aforesaid to apply for an order from the said Supreme Court may, should he so think fit, present a petition in the first instance to the said court, or to a judge thereof, for such order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition before the said court or judge, and may serve such person or persons with notice of such petition as he may deem entitled to service thereof. 13 and 14 Vict. (Imp.), c. 60, s. 40.

62. What may be done upon petition.—Upon the hearing of any such motion or petition it shall be lawful for the said Supreme Court or a Judge thereof, should it be deemed necessary, to direct a reference to inquire into any facts which require such an investigation, or it shall be lawful for the said court or a judge thereof, to direct such motion or petition to stand over, to enable the petitioner or petitioners to adduce evidence or further evidence before the said court, or to enable notice or any further notice of such motion or petition to be served upon any person or persons. 13 and 14 Vict. (Imp.), c. 60, s. 41.

63. Court may dismiss petition with or without costs.—Upon the hearing of any such motion or petition it shall be lawful for the said Supreme Court, or a Judge thereof, to dismiss such motion or petition, with or without costs, or to make an order thereupon in conformity with the provisions of this Act. 13 and 14 Vict. (Imp.), c. 60, s. 42.

64. Power to make an order in a cause.—Whenever in any cause or matter, either by the evidence adduced therein, or by the admission of the parties, or by a report of the Registrar or one of the Deputy or District Registrars of the said Supreme Court, the facts necessary for an order under this Act shall appear to such court to be sufficiently proved, it shall be lawful for the said court, either upon the hearing of the said cause or of any petition or motion in the said cause or matter, to make such order under this Act. 13 and 14 Vict. (Imp.), c. 60, s. 43.

65. Order made by the Supreme Court, founded on certain allegations, to be conclusive evidence of the matter con-

tained in such allegations.—Whenever any order shall be made under this Act by the said Supreme Court, or a Judge thereof, for the purpose of conveying or assigning any lands, or for the purpose of releasing or disposing of any contingent right, and such order shall be founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or devisee of a mortgagee is out of the jurisdiction of the court, or cannot be found, or that it is uncertain which of several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir or last surviving devisee of a mortgagee, be living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or devisee, then in any of such cases the fact that the said court has made an order upon such an allegation, shall be conclusive evidence of the matter so alleged in any court of Law or Equity upon any question as to the legal validity of the order: Provided always, that nothing herein contained shall prevent the said court directing a re-conveyance or re-assignment of any lands conveyed or assigned by any order under this Act, or a re-disposition of any contingent right conveyed or disposed of by such order; and it shall be lawful for the said court to direct any of the parties to any suit concerning such lands or contingent right to pay any costs occasioned by the order under this Act, when the same shall appear to have been improperly obtained. 13 and 14 Vict. (Imp.), c. 60, s. 44.

66. Trustees of charities.—It shall be lawful for the said Supreme Court to exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action in the trustee or trustees of any charity or society over which charity or society the said court would have jurisdiction upon action brought, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument, or by the decree of the said court, or by order made upon a petition to the said court under any statute authorising the said court to make an order to that effect in a summary way upon petition. 13 and 14 Vict. (Imp.), c. 60, s. 45.

67. No escheat of property held upon trust or mortgage.—No lands, stock, or chose in action vested in any person upon any trust or by way of mortgage, or any profits thereof, shall escheat or be forfeited to Her Majesty, Her heirs or successors, or to any corporation, or other person, by reason of the attainder or conviction for any offence of such trustee or mortgagee, but shall remain in such trustee or mortgagee, or survive to his or her co-trustee, or descend or vest in his or her representative, as if no such attainder or conviction had taken place. 13 and 14 Vict. (Imp.), c. 60, s. 46.

68. Act not to prevent escheat or forfeiture of beneficial interest.—Nothing contained in this Act shall prevent the escheat or forfeiture of any lands or personal estate vested in any such trustee or mortgagee, so far as relates to any beneficial interest therein of any such trustee or mortgagee, but such lands or personal estate, so far as relates to any such beneficial interest, shall be recoverable in the same manner as if this Act had not passed. 13 and 14 Vict. (Imp.), c. 60, s. 47.

69. Costs may be paid out of the estate.—The said Supreme Court may order the costs and expenses of and relating to the petitions, orders, directions, conveyances, assignments, and transfers to be made in pursuance of this Act, or any of them, to be paid and

raised out of or from the lands or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said court shall think proper. 13 and 14 Vict. (Imp.), c. 60, s. 51.

70. Commission concerning person of unsound mind.—

Upon any petition being presented under this Act to the said Supreme Court concerning a person of unsound mind, it shall be lawful for the said court to direct that a commission in the nature of a writ *de lunatico inquirendo* shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission. 13 and 14 Vict. (Imp.), c. 60, s. 52.

71. Suit may be directed.—Upon any petition under this Act being presented to the said Supreme Court, it shall be lawful for the said court to postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose. 13 and 14 Vict., c. 60, s. 53.

72. Supreme Court may make an order for vesting the estate, in lieu of conveyance by a party to the suit after a decree or order for sale.—When any decree or order shall have been made by the said Supreme Court, or by any other court of competent jurisdiction in the Province of British Columbia, directing the sale of any lands for any purpose whatever, every person seized or possessed of such land, or entitled to a contingent right therein, being a party to the action or proceeding in which such decree or order shall have been made and bound thereby, or being otherwise bound by such decree or order shall be deemed to be so seised or possessed or entitled (as the case may be), upon a trust within the meaning of this Act, and in every such case it shall be lawful for the said Supreme Court, or a Judge thereof, if the said court or said judge shall think it expedient for the purpose of carrying such sale into effect, to make an order vesting such lands, or any part thereof, for such estate as the court or such judge shall think fit, either in any purchaser or in such other person as the court or such judge shall direct; and every such order shall have the same effect as if such person so seised or possessed or entitled had been free from all disability, and had duly executed all proper conveyances and assignments of such lands for such estate. 15 and 16 Vict. (Imp.), c. 55, s. 1.

73. Companies to comply with such orders.—When any order being or purporting to be under this Act, shall be made by the said Supreme Court or a Judge thereof, vesting the right to any stock, or vesting the right to transfer any stock, or vesting the right to call for the transfer of any stock, in any person or persons, in every such case the legal right to transfer such stock shall vest accordingly; and the person or persons so appointed shall be authorised and empowered to execute all deeds and powers of attorney, and to perform all acts relating to the transfer of such stock into his or their own name or names, or otherwise, to the extent and in conformity with the terms of the order; and all companies and associations whatever, and all persons, shall be equally bound and compellable to comply with the requisitions of such persons or person so appointed as aforesaid, to the extent and in conformity with the terms of such order, as such companies, associations, or persons would have been bound and compellable to comply with the

requisitions of the person in whose place such appointment shall have been made. 15 and 16 Vict. (Imp.), c. 55, s. 6.

74. Indemnity to companies so obeying.—Every order made or to be made, being or purporting to be made under this Act, by the said Supreme Court, or a judge thereof, and duly passed and entered, shall be a complete indemnity to all companies and associations whatsoever, and all persons, for any act done pursuant thereto; and it shall not be necessary for any such company, or association, or person, to inquire concerning the propriety of such order, or whether the said Supreme Court or such judge thereof had jurisdiction to make the same. 15 and 16 Vict. (Imp.), c. 55, s. 7.

DEVOLUTION OF TRUST ESTATES AND MORTGAGEE'S INTERESTS.

75. Inheritance in case a person hold same in trust or by way of mortgage, devolves to personal representatives.—Where an estate or interest of inheritance, or limited to the heir as special occupant in any tenements or hereditaments corporeal or incorporeal, is vested on any trust or by way of mortgage in any person solely, the same shall on his death, notwithstanding any testamentary disposition, devolve to, and become vested in, his personal representatives or representative from time to time in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose and otherwise deal with the same, shall belong to the deceased's personal representatives or representative, from time to time, with all the like incidents, but subject to all the like rights, equities and obligations as if the same were a chattel real vesting in them or him; and for the purposes of this section the personal representatives for the time being, of the deceased, shall be deemed in law his heirs and assigns within the meaning of all trusts and powers:

(2.) **Application.**—This section applies only in cases of deaths, after the 17th day of April, 1896. 1896, c. 48, ss. 2 and 3,

76. Conveyance of real estate by executors.—Where any person has entered into a contract in writing for the sale and conveyance of real estate, or for any estate or interest therein, and such person has died intestate, or without providing by will for the conveyance of such real estate, or estate or interest therein, to the person entitled or to become entitled to such conveyance under such contract, then, where, upon the supposition of the deceased being alive, he will be liable to execute a conveyance, the executor, administrator, or administrator with the will annexed (as the case may be), of such deceased person, shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estate, and of such nature as the said deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity. 1897, c. 44, s. 13.

RIGHT TO APPLY FOR DIRECTIONS.

77. Trustees, executors, etc., may apply by petition, etc., to a Judge of the Supreme Court for opinion, advice, etc., in management, etc., of trust property.—Any trustee, executor or administrator shall be at without the institution of a suit, to apply by petition to any Judge of the Supreme Court, or by summons upon a written statement to any such Judge at Chambers, for the opinion, advice, or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon, or the hearing thereof to be attended by, all persons interested in such application, or such of them as the said Judge shall think expedient; and the trustee, executor, or administrator, acting upon the opinion, advice, or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator in the subject-matter of the said application: Provided nevertheless, that this Act shall not extend to indemnify any trustee, executor, or administrator in respect of any act done in accordance with such opinion, advice, or direction as aforesaid, if such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice, or direction; and the costs of such application as aforesaid shall be in the discretion of the Judge to whom the said application shall be made. C. A. 1888, c. 115, s. 23.

REMUNERATION.

78. Remuneration of trustees, etc.—Any trustee under a deed, settlement, or will, any executor or administrator, any guardian appointed by any court, and any testamentary guardian, or any other trustee, howsoever the trust is created, shall be entitled to such fair and reasonable allowance, not exceeding five per cent. on the gross value of the estate, by way of remuneration for his care, pain and trouble, and his time expended in and about the trust estate, as may be allowed by the Supreme Court or a Judge thereof, or by any master or referee thereof, to whom the matter may be referred, in addition to any other allowance for expenses actually incurred to which such trustee, executor, administrator, or guardian may by law be entitled. 1897, c. 44, s. 2.

79. Amount to be settled by Court.—A Judge of the Supreme Court may, on application to him for the purpose, settle the amount of such compensation, although the trust estate is not before the court in any action. 1897, c. 44, s. 3.

80. To apply to trusts heretofore and hereafter passed.—Such compensation may be allowed in the case of any trust heretofore created, as well as in any to be hereafter created. 1897, c. 44, s. 4.

81. Judge may allow compensation to executors, etc.—A Judge of the Supreme Court may allow to the executor, or trustee, or administrator acting under will or letters of administration a fair and reasonable allowance, not exceeding five per cent. on the gross value of the estate, by way of remuneration for his care, pains and trouble, and his time expended in or about the executorship, trusteeship, or administration of the estate and effects vested in him under any will or letters of administration, and in administering, disposing of, and arranging and settling the same and generally in arranging and settling the affairs of the estate, and may make an

order or orders from time to time therefor, and the same shall be allowed to an executor, trustee or administrator in passing his accounts, in addition to any other allowances for expenses actually incurred, to which such trustee, executor, or administrator may by law be entitled. 1897, c. 44, s. 5.

82. Where allowance is fixed by instrument.—Nothing in the preceding four sections shall apply to any case in which the allowance is fixed by the instrument creating the trust. 1897, c. 44, s. 6.

INSOLVENT ESTATES.

83. Where estate insufficient to pay debts, trustee may make declaration and become trustee for creditors.—In the administration of the estate of any person whose estate may prove to be insufficient for the payment in full of his debts and liabilities, the executor, executors, administrator or administrators administering such estate may file a declaration of the circumstances in the Registry or office out of which the probate or letters of administration affecting such estate were issued, and thereafter such executor or administrator shall be deemed to be a trustee or trustees for the benefit of the creditors of the person whose estate is being administered, subject to the provisions of the "Creditors' Trust Deeds Act, 1901," as fully to all intents and purposes as if the said estate had been assigned to such executor or administrator for the benefit of the creditors of the person whose estate is being administered under the provisions of the "Creditors' Trust Deeds Act." 1897, c. 44, s. 7. 1902, c. 67, s. 2.

84. Publication of declaration.—The declaration filed by the executor or administrator under the last preceding section shall be published in manner provided for the publication of creditors' trust deeds by the "Creditors' Trust Deeds Act, 1901." 1897, c. 44, s. 8. 1902, c. 67, s. 2.

85. Application of "Creditors' Trust Deeds Act."—After the filing of such declaration the executor or administrator shall administer the estate under the provisions of the "Creditors' Trust Deeds Act, 1901," in so far as the same are applicable, and without regard to any judgment or attachment not completely executed by payment, in payment of the debts ratably and in proportion to their respective amounts. 1897, c. 44, s. 9. 1902, c. 67, s. 2.

86. Filing of declaration in Land Registry Offices.—A notarial copy of such declaration shall be filed in each of the Land Registry Offices in the Province, and when so filed shall have the same force and effect as the recording of a creditors' trust deed under the "Creditors' Trust Deeds Act, 1901." 1897, c. 44, s. 10; 1902, c. 67, s. 2.

87. Registered charges not affected.—Nothing herein contained shall prejudice or affect any lien, or any charge by way of mortgage, which any creditor may hold and be entitled to for the payment of his debt, or any judgment registered under the "Land Registry Act" before the filing of the said declaration. 1897, c. 44, s. 11.

88. Removal of trustees by "cestuis que trust."—Any trustee or receiver appointed by any court or judge may be removed and a trustee or trustees substituted in lieu and place of such trustee or receiver, at any time upon application to the Supreme Court or a Judge thereof, by any *cestui que trust* being *sui juris* with the consent and approval of a majority in interest and number of the *cestuis que trust* likewise being *sui juris*. 1897, c. 44, s. 12.

LIABILITY.

89. Express trusts not barred by statutes of limitation.—
New section substituted by 5 Edw. VII., c. 51, s. 3.

5 EDWARD VII., CHAP. 51.

R. S., 1897, c. 187. 1900, c. 41.—An Act to amend the
"Trustees and Executors Act."

8th April, 1905.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:—

1. Short title.—This Act may be cited as the "Trustees and Executors Act Amendment Act, 1905."

2. S. 27 re-enacted.—Section 27 of chapter 187 of the Revised Statutes, 1897, being the "Trustees and Executors Act," is hereby repealed, and the following section is substituted therefor:—

"**27. Payment into Court by trustees.**—(1.) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the Supreme Court of British Columbia, and the same shall, subject to Rules of Court, be dealt with according to the orders of the said into court.

"(2.) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into Court.

"(3.) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker, broker, or other depositary, the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the Act of all the persons entitled to the moneys and securities so transferred, paid, or delivered." 1893, c. 53, s. 42 (Imp.)

3. S. 89 re-enacted.—Section 89 of said chapter 187 is hereby repealed and the following section is substituted therefor:—

"**89. Statute of limitations may be pleaded by trustees.**—

(1.) In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

"(a.) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through him:

"(b.) If the action or other proceeding is brought to recover

money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding, in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received, but so, nevertheless, that the statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary shall be an interest in possession.

"(2.) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding and this section had been pleaded.

"(3.) This section shall apply only to actions or other proceedings commenced after the first day of January, one thousand nine hundred and six, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations." 1888, c. 59, s. 8 (Imp.).

4. Loans and investments by trustees not chargeable as breaches of trust.—(1.) A trustee lending money on the security of any property on which he can lawfully lend shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be an able, practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2.) A trustee lending money on the security of any leasehold property shall not be chargeable with breach of trust only upon the ground that in making such loan he dispensed either wholly or partly with the production or investigation of the lessor's title.

(3.) A trustee shall not be chargeable with breach of trust only upon the ground that in effecting the purchase of or in lending money upon the security of any property he has accepted a shorter title than the title which a purchaser is, in the absence of a special contract, entitled to require, if, in the opinion of the court, the title accepted be such as a person acting with prudence and caution would have accepted.

(4.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the first day of July, 1905. 1893, c. 53, s. 8. (Imp.).

5. Improper advances of trust moneys on mortgage security.—(1.) Where a trustee improperly advances trust money on a mortgage security which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized

investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof, with interest.

(2.) This section applies to investments made as well before as after the commencement of this Act, except where an action or other proceeding was pending with reference thereto on the first day of July, 1905. 1893, c. 53, s. 9 (Imp.).

6. Retirement of trustee.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person, if any, as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Act, without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if and as far as contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the commencement of this Act. 1893, c. 53, s. 11 (Imp.).

7. Vesting of trust property in new or continuing trustees.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2.) Where a deed by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust, or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner directed by or under any Act of the Legislature.

(4.) For purposes of registration of the deed in any Registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5.) This section applies only to deeds executed after the first day of July, 1905. 1893, c. 53, s. 12 (Imp.).

8. Power of trustee for sale to sell by auction, etc.—(1.) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell, or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of

title or other matter as the trustee thinks fit, with power to vary any contract for sale, and to buy in at any auction, or to rescind any contract for sale and to re-sell, without being answerable for any loss.

(2.) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) This section applies only to a trust or power created by an instrument coming into operation after the first day of July, 1905. 1893, c. 53, s. 13 (Imp.).

9. Power to sell subject to depreciatory conditions.—No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2.) No sale made by a trustee shall, after the execution of the conveyance, be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3.) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4.) This section applies only to sales made after the first day of July, 1905. 1893, c. 53, s. 14 (Imp.).

10. Power to authorize receipt of money by banker or solicitor.—(1.) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust. And a trustee shall not be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment.

(2.) A trustee may appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the banker or solicitor to have the custody of and to produce the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(3.) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Act had not been passed, in case he permits any such money, valuable consideration or property to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable the banker or solicitor (as the case may be), to pay or transfer the same to the trustee.

(4.) This section applies only where the money or valuable consideration or property is received after the first day of July, 1905.

(5.) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust. 1893, c. 53, s. 17 (Imp.).

11. Power to insure property.—(1.) A trustee may insure against loss or damage by fire any building or other insurable pro-

perty to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2.) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) This section applies to trusts created either before or after the commencement of this Act, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. 1893, c. 53, s. 18 (Imp.).

12. Power to compound.—(1.) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor or administrator, or two or more trustees acting together, or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4.) This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Act. 1893, c. 33, s. 21 (Imp.)

13. When powers of two or more trustees may be exercised by survivor or survivors.—(1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to trusts constituted after or created by instruments coming into operation after the first day of July, 1905. 1893, c. 53, s. 22 (Imp.).

14. Exoneration of trustees in respect of certain powers of attorney.—A trustee acting or paying money in good faith under or in pursuance of any power of attorney, shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power; if this fact was not known to the trustee at the time of his so acting or paying.

Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee. 1893, c. 53, s. 23 (Imp.).

15. Implied indemnity of trustees.—A trustee shall, without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any banker, broker or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default, and may reimburse himself, or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers. 1893, c. 53, s. 24 (Imp.).

16. Jurisdiction of Court in cases of breach of trust.—If it appears to the Supreme Court, or a Judge thereof, that a trustee, however appointed, is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court or Judge may relieve the trustee either wholly or partly from personal liability for the same. 1896, c. 35, s. 3 (Imp.).

17. Appointment of judicial trustees.—(1.) Where application is made to the Supreme Court by or on behalf of the person creating, or intending to create a trust, or by or on behalf of a trustee or beneficiary, the court may, in its discretion, appoint a person (in this Act called a judicial trustee) to be a trustee of that trust, either jointly with any other person or as sole trustee, and, if sufficient cause is shown, in place of all or any existing trustees:

(2.) The administration of the property of a deceased person, whether a testator or intestate, shall be a trust, and the executor or administrator a trustee, within the meaning of sections 16, 17 and 18 of this Act.

(3.) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee, and, in the absence of such nomination, or if the court is not satisfied of the fitness of a person so nominated, an official of the court may be appointed, and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4.) The court may, either on request or without request, give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5.) There may be paid to a judicial trustee out of the trust property such remuneration, not exceeding the prescribed limits, as the court may assign in each case, subject to any rules under this Act respecting the application of such remuneration where the judicial trustee, if an official of the court, and the remuneration so assigned to any judicial trustee shall, save as the court may for special reasons otherwise order, cover all his work and personal outlay.

(6.) Once in every year the accounts of every trust of which a

judicial trustee has been appointed shall be audited, and a report thereon made to the court by the persons prescribed by the rules made under the next following section, and, in any case where the court shall so direct, an inquiry into the administration by a judicial trustee of any trust, or into any dealing or transaction of a judicial trustee, shall be made in the manner prescribed by such Rules. 1896, c. 35, s. 1 (Imp.).

18. Rules.—Rules may be made by the Lieutenant-Governor in Council for carrying into effect the provisions of the preceding section, and especially—

(1.) For requiring judicial trustees, who are not officials of the court, to give security for the due application of any trust property under their control:

(2.) Respecting the safety of the trust property, and the custody thereof; .

(3.) Respecting the remuneration of judicial trustees and for fixing and regulating the fees to be taken under this Act, so as to cover the expenses of the administration of this Act, and respecting the payment of such remuneration and fees out of the trust property, and, where the judicial trustee is an official of the court, respecting the application of the remuneration and fees payable to him.

(4.) For dispensing with formal proof of facts in proper cases:

(5.) For facilitating the discharge by the court of administrative duties under this Act without judicial proceedings and otherwise regulating procedure under this Act and making it simple and inexpensive:

(6.) Respecting the suspension or removal of any judicial trustee, and the succession of another person to the office of any judicial trustee who may cease to hold office, and the vesting in such person of any trust property:

(7.) Respecting the classes of trusts in which officials of the court are not to be judicial trustees, or are to be so temporarily or conditionally:

(8.) Respecting the procedure to be followed where the judicial trustee is executor or administrator:

(9.) For preventing the employment by judicial trustees of other persons at the expense of the trust, except in cases of strict necessity:

(10.) For the filing and auditing of the accounts of any trust of which a judicial trustee has been appointed. 1896, c. 35, s. 4 (Imp.).

19. 1900, c. 41, repealed.—Chapter 41, of the Statutes of 1900, being the "Trustees' Liability Act, 1900," is hereby repealed.

NORTH WEST TERRITORIES, ALBERTA and SASKATCHEWAN

N. W. T. ORDINANCES, 1903 (SESS. 2), CHAP. 11.

AN ORDINANCE RESPECTING TRUSTEES AND EXECUTORS
AND THE ADMINISTRATION OF ESTATES.

(Assented to November 21, 1903.)

The Lieutenant Governor, by and with the advice and consent of the Legislative Assembly of the Territories, enacts as follows:

SHORT TITLE.

1. Short title.—This Ordinance may be cited as "*The Trustee Ordinance.*" 1903, Sess. 2, c. 11, s. 1.

INTERPRETATION.

2. Interpretation.—Unless the context otherwise requires the expression "trustee" shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee and shall also include several joint trustees. 1903, Sess. 2, c. 11, s. 2.

INVESTMENTS.

3. Trustees may invest trust moneys in certain securities.—Trustees having trust money in their hands which it is their duty or which it is in their discretion to invest at interest shall be at liberty at their discretion to invest the same in any stock, debentures or securities of the government of the Dominion of Canada or of any of the provinces of Canada or any debentures or securities the payment of which is guaranteed by the government of the Dominion of Canada or of any province of Canada or in the debentures of any municipality or school district in the Territories; or in securities which are a first charge on land held in fee simple provided that such investments are in other respects reasonable and proper and such trustees shall also be at liberty at their discretion to call in any trust funds invested in any other securities than as aforesaid and to invest the same in any such stock, debentures or securities aforesaid and also from time to time at their discretion to vary any such investments as aforesaid for others of the same nature; and any such moneys already invested in any such stock, debentures or securities as aforesaid shall be held and taken to have been lawfully and properly invested.

(2.) **This section to apply to all trustees, etc.**—This section shall apply and extend to both present and future trustees. 1903, Sess. 2, c. 11, s. 3.

4. Additional powers given.—The powers hereby conferred are, in addition to the powers conferred by the instrument, if any, creating the trust:

Proviso.—Provided that nothing herein contained shall authorize any trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms

directed to do by the instrument creating the trust. 1903, Sess. 2, c. 11, s. 4.

5. When trustee not chargeable for lending on insufficient security.—No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able, practical surveyor or valuer instructed and employed independently of any owner of the property whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report and that the loan was made under the advice of the surveyor or valuer expressed in the report.

(2) This section shall apply to a loan upon any property on which the trustee can lawfully lend and to transfers of existing securities as well as to new securities and to investments made as well before as after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 5.

6. Trustees lending more than authorized amount.—Where a trustee has improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon the security shall be deemed an authorized investment for such less sum and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section shall apply to investments made as well before as after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 6.

7. Liability in case of change of character of investment.—No trustee shall be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law and this provision shall apply to cases arising before or after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 7.

RIGHTS AND LIABILITIES OF TRUSTEES.

8. Every trust instrument to be deemed to contain clause for the indemnity and reimbursement of the trustees.—Every deed, will or other document creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following that is to say: "That the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity and shall be answerable and accountable only for their own acts, receipts, neglects or defaults and not for those of each other nor for any banker, broker or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities nor for any other loss unless the same shall happen through their own wilful neglect or default respectively; and also that it shall be lawful for the trustees or trustee for the

time being of the said deed, will or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument. 1903, Sess. 2, c. 11, s. 8.

9. Appointment of new trustees.—Where a trustee, either original or substituted and whether appointed by the court or otherwise, dies or desires to be discharged from or refuses or becomes unfit or incapable to act in the trusts or powers in him reposed before the same have been fully discharged and performed it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust, if any, or if there be no such person or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being or the acting executors or executor or administrators or administrator of the last surviving and continuing trustee or for the last retiring trustee by writing to appoint any other person or persons to be a trustee or trustees in place of the trustee or trustees dying or desiring to be discharged or refusing or becoming unfit or incapable to act as aforesaid; and so often as any new trustee or trustees is or are so appointed as aforesaid all the trust property, if any, which for the time being is vested in the surviving or continuing trustees or trustee or in the heirs, executors or administrators of any trustees or trustee shall with all convenient speed be conveyed, assigned and transferred so that the same may be legally and effectually vested in such new trustee or trustees either solely or jointly with the surviving or continuing trustees or a surviving or continuing trustee as the case may require; and every new trustee to be appointed as aforesaid as well before as after such conveyance, assignment or transfer as aforesaid and also every trustee appointed by the court either before or after the passing of this Ordinance shall have the same powers, authorities and discretions and shall in all respects act as if he had originally been nominated a trustee by the deed, will or other instrument creating the trust.

(2) On the appointment of a new trustee for the whole or any part of the trust property:

(a) The number of trustees may be increased; and

(b) A separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property and any existing trustee may be appointed or remain one of such separate set of trustees; or if only one trustee was originally appointed then one separate trustee may be so appointed for any such part of the trust property; and

(c) It shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d) Any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done.

(3) Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise

vested in him shall have the same powers, authorities and discretions and may in all respects act as if he has been originally appointed a trustee by the instrument, if any, creating the trust.

(4) The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the provisions of this section.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6) This section applies to trusts created either before or after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 9.

10. Retirement of trustee.—Where there are more than two trustees if one of them by deed declares that he is desirous of being discharged from the trust and if his co-trustees and such other person, if any, as is empowered to appoint trustees by deed consent to the discharge of the trustee and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust and shall by the deed be discharged therefrom under this Ordinance without any new trustee being appointed in his place.

(2) Any assurance or thing requisite for vesting the trust property in the continuing trustee alone shall be executed or done.

(3) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4) This section applies to trusts created either before or after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 10.

11. Vesting of trust property in new or continuing trustees without conveyance.—Where an instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust or in any chattel so subject or the right to recover and receive any debt or other thing in action so subject shall vest in the persons who by virtue of such instrument become and are the trustees for performing the trust, that declaration shall without any conveyance or assignment but subject to the provision of any Act or Ordinance respecting the registration of titles to lands operate to vest in those persons as joint tenants and for the purpose of the trust that estate, interest or right.

(2) Where an instrument by which a retiring trustee is discharged under this Ordinance contains such a declaration as is in this section mentioned by the retiring and continuing trustees and by the other person, if any, empowered to appoint trustees that declaration shall without any conveyance or assignment but subject as aforesaid operate to vest in the continuing trustees alone as joint tenants and for the purposes of the trust, the estate, interest or right to which the declaration relates.

(3) This section does not extend to any share, stock, annuity or property only transferable in books kept by a company or other body or in manner prescribed by or under an Ordinance of the Legislative Assembly of the Territories.

(4) For the purpose of registration of an instrument the person or persons mailing the declaration shall be deemed the conveying party or parties and the conveyance shall be deemed to be made by him or them under a power conferred by this Ordinance. 1903, Sess. 2, c. 11, s. 11.

PURCHASE AND SALE.

12. Power of trustee for sale to sell by auction, etc.—

Where a trust for sale or a power of sale of property is vested in a trustee he may sell or concur with any other person in selling all or any part of the property either subject to prior charges or not and either together or in lots, by public auction or by private contract subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit with power to vary any contract for sale and to buy in at any auction or to rescind any contract for sale and to resell without being answerable for any loss.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power and shall have effect subject to the terms of that instrument and to the provisions therein contained. 1903, Sess. 2, c. 11, s. 12.

13. Power to sell subject to depreciatory conditions.—No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall after the execution of the conveyance be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for sale was made.

(3) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid. 1903, Sess. 2, c. 11, s. 13.

14. Fee simple estates of bare trustees to vest in their personal representatives.—Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seized in fee simple such hereditaments shall vest in the legal personal representative from time to time of such trustee. 1903, Sess. 2, c. 11, s. 14.

15. Conveyances by married woman as bare trustee.—Where any freehold hereditament is vested in a married woman as bare trustee she may convey or surrender the same as if she were a *feme sole* and without her husband joining in the conveyance. 1903, Sess. 2, c. 11, s. 15.

16. Receipts of trustees to be effectual discharges.—The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust or for any limited purpose and such payment to and receipt by the survivors or survivor of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof unless the contrary is expressly declared by the instrument creating the trust or security. 1903, Sess. 2, c. 11, s. 16.

VARIOUS POWERS AND LIABILITIES.

17. Appointment of agents by trustees for certain purposes.—It shall be lawful for a trustee to appoint an advocate to be his agent to receive and give a discharge for any money or any valuable consideration of property receivable by such trustee under the trust; and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case of permitting such money, valuable consideration or property to remain in the hands or under the control of the advocate for a period longer than is reasonably necessary to enable the solicitor to pay or transfer the same to the trustee.

(2) It shall be lawful for a trustee to appoint a chartered bank or advocate to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance or otherwise; and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment:

Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case he permits such money to remain in the hands or under the control of the bank or advocate for a period longer than is reasonably necessary to enable him to pay the same to the trustee. 1903, Sess. 2, c. 11, s. 17.

18. Powers of trustees to insure trust.—It shall be lawful for but not obligatory upon a trustee to insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property and to pay the premiums for such insurance out of the income thereof or out of the income of any other property subject to the same trusts without obtaining the consent of any person entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested to do so. 1903, Sess. 2, c. 11, s. 18.

19. Trustee committing breach of trust at instigation of beneficiary.—Where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary the court may, if it thinks fit and notwithstanding that the beneficiary is a married woman entitled for her separate use whether with or without a restraint upon anticipation make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him. 1903, Sess. 2, c. 11, s. 19.

20. Power of trustee to give receipts.—The receipt in writing of any trustee for any money, securities or other personal property or effects payable, transferable or deliverable to him under any trust or power shall be a sufficient discharge for the same and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) This section applies to trusts created either before or after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 20.

21. Power for executors and trustees to compound, etc.—

A trustee or two or more trustees acting together or a sole acting trustee where by the instrument, if any, creating the trust a sole trustee is authorized to execute the trusts and powers thereof may if and as he or they may think fit accept any composition or any security real or personal for any debt or for any property real or personal claimed and may allow any time for payment for any debt and may compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the testator's or intestate's estate or to the trust and for any of those purposes may enter into give execute and do such agreements, instruments of composition or arrangement, releases and other things as to him or them seem expedient without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(2) This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) This section applies to executorships, administratorships and trusts constituted or created either before or after the passing of this Ordinance. 1903, Sess. 2, c. 11, s. 21.

22. Powers of two or more trustees.—Where a power or trust is given to or vested in two or more trustees jointly then unless the contrary is expressed in the instrument, if any, creating the power or trust the same may be exercised or performed by the survivor or survivors of them for the time being. 1903, Sess. 2, c. 11, s. 22.

23. Exoneration of trustees in respect of certain powers of attorney.—A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead or had done some act to avoid the power if this fact was not known to the trustee at the time of his so acting or paying.

(2) Nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made and the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee. 1903, Sess. 2, c. 11, s. 23.

MAINTENANCE OF INFANTS.

24. In case property held in trust for infant, trustees may apply income for maintenance of infant.—In all cases where any property is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age it shall be lawful for such trustees at their sole discretion to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the income to which such infant may be entitled in respect of such property whether there be any fund applicable to the same purpose or any other person bound by law to provide for such maintenance or education or not; and such trustees shall accumulate

all the residue of such income by way of compound interest by investing the same and the resulting income thereof from time to time in proper securities for the benefit of the person who shall ultimately become entitled to the property from which such accumulation shall have arisen:

Provided always that it shall be lawful for such trustees at any time if it shall appear to them expedient to apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year. 1903, Sess. 2, c. 11, s. 24.

25. Property held in trust for infants may be sold by leave of a judge and proceeds thereof applied for maintenance and education of such infants.—Application and investment of moneys so realised.—In all cases where any property either real or personal is held by trustees in trust for an infant either absolutely or contingently on his attaining the age of twenty-one years or on the occurrence of any event previously to his attaining that age and where the income arising from such property is insufficient for the maintenance and education of such infant, it shall be lawful for such trustees by leave of a judge of the supreme court to be obtained in a summary manner to sell and dispose of any portion of such real or personal property and to pay to the guardians, if any, of such infant or otherwise to apply for or towards the maintenance or education of such infant the whole or any part of the money arising from such sale as aforesaid; and in the event of the whole of the money arising from any sale of the real or personal property as aforesaid not being immediately required for the maintenance and education of such infant then the said trustees shall invest the surplus moneys and the resulting income therefrom from time to time in proper securities and shall apply such moneys and the proceeds thereof from time to time for the education and maintenance of the said infant and shall hold all the residue of the moneys and interest thereon not required for the education and maintenance of such infant as aforesaid for the benefit of the person who shall ultimately become entitled to the property from which such moneys and interest have arisen. 1903, Sess. 2, c. 11, s. 25.

26. Distribution of assets under trust.—Deeds for benefit of creditors or of the assets of a testator or intestate after notice given by trustee, assignee, executor or administrator.—Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally or a particular class or classes of creditors where the creditors are not designated by name therein or an executor or an administrator has given such or the like notices as in the opinion of the court in which such trustee, assignee, executor or administrator is sought to be charged, would have been given by the supreme court in an action for the execution of the trusts of such deed or assignment or an administration suit, as the case may be, for creditors, and others to send in to such trustee, assignee, executor or administrator their claims against the person for the benefit of the creditors of whom such deed or assignment is made or the estate of the testator or intestate, as the case may be, the trustee, assignee, executor or administrator shall at the expiration of the time named in the said notices or the last of the said notices for sending in such claims be at liberty to distribute the proceeds of the trust estate or the assets of the testator or intestate, as the case may be, or any part thereof amongst the parties entitled thereto having regard to the claims of which the trustee, assignee,

executor or administrator has then notice and shall not be liable for the proceeds of the trust estate or assets, as the case may be, or any part thereof so distributed to any person of whose claim the trustee, assignee, executor or administrator had not notice at the time of the distribution thereof or a part thereof, as the case may be; but nothing in this Ordinance contained shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part thereof into the hands of the person or persons who may have received the same respectively. 1903, Sess. 2, c. 11, s. 26.

PAYMENT INTO COURT BY TRUSTEES.

27. Payment into court by trustees.—Trustees or the majority of trustees having in their hands or under their control money or securities belonging to a trust or to the estate of a deceased person may pay the same into the supreme court; and the same shall subject to the rules of court be dealt with according to the orders of the supreme court.

(2) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3) Where any moneys or securities are vested in any persons as trustees and the majority are desirous of paying the same into court but the concurrence of the other or others cannot be obtained the supreme court may order the payment into court to be made by the majority without the concurrence of the other or others and where any such moneys or securities are deposited with any banker, broker or other depositary the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court and every transfer payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities as transferred, paid or delivered. 1903, Sess. 2, c. 11, s. 27.

28. Relief of trustees committing technical breach of trust.—If in any proceeding affecting trustees or trust property it appears to the court that a trustee whether appointed by the court or by an instrument in writing or otherwise or that any person who in law may be held to be fiduciarily responsible as a trustee is or may be personally liable for any breach whether the transaction alleged or found to be a breach of trust occurred before or after the passing of this Ordinance but has acted honestly and reasonably and ought fairly to be excused for the breach of trust and for omitting to obtain the directions of the court in the matter in which he committed such breach then the court may relieve the trustee either wholly or partly from personal liability for the same. 1903, Sess. 2, c. 11, s. 28.

RIGHTS AND LIABILITIES OF EXECUTORS AND ADMINISTRATORS.

29. Actions by executors and administrators for torts.—The executors or administrators of any deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased except in cases of libel and slander in the same manner and with the same rights and remedies as the

deceased would if living have been entitled to do; and the damages when recovered shall form part of the personal estate of the deceased; but such action shall be brought within one year after his decease. 1903, Sess. 2, c. 11, s. 29.

30. Actions against executors and administrators for torts.—In case any deceased person committed a wrong to another in respect of his person or of his real or personal property except in cases of libel and slander the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong; but such action shall be brought within one year after the decease. 1903, Sess. 2, c. 11, s. 30.

31. Damages in actions under two preceding sections.—In estimating the damages in any action under either of the next preceding two sections the benefit, gain, profit or advantage which in consequence of or resulting from the wrong committed may have accrued to the estate of the person who committed the wrong shall be taken into consideration and shall form part or may constitute the whole of the damages to be recovered and whether or not any property or the proceeds of value of property belonging to the person bringing the action or to his estate has or have been appropriated by or added to the estate or moneys of the person who committed the wrong. 1903, Sess. 2, c. 11, s. 31.

32. Executors or administrators of a lessor may distrain for arrears.—The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will for the arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done if living. 1903, Sess. 2, c. 11, s. 32.

33. Such arrears of rent may be distrained for within six months after determination of the lease.—Such arrears may be distrained for at any time within six months after the determination of the term or lease and during the continuance of the possession of the tenant from whom the arrears became due; and the law relating to distresses for rent shall be applicable to the distresses so made as aforesaid. 1903, Sess. 2, c. 11, s. 33.

34. Representatives of deceased joint contractors liable although the other joint contractors be living.—In case any one or more joint contractors, obligors or partners die the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners may proceed by action against the representatives of the deceased contractor, obligor or partner in the same manner as if the contract, obligation or promise had been joint and several and this notwithstanding there may be another person liable under such contract, obligation or promise still living and an action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies shall not be liable to a greater extent than they would have been if this section had not been passed. 1903, Sess. 2, c. 11, s. 34.

35. Devisee in trust may raise money by sale or mortgage to satisfy charges notwithstanding want of express power in the will.—Where by any will coming into operation before or after the passing of this Ordinance a testator charges his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and de-

vises the estate so charged to any trustee or trustees for the whole of his estate or interest therein and does not make any express provision for the raising of such debt, legacy or sum of money out of such estate the said trustee or trustees notwithstanding any trusts actually declared by the testator may raise such debt, legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said real estate or any part thereof or by a mortgage of the same or partly in one mode and partly in the other and a mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper. 1903, Sess. 2, c. 11, s. 35.

36. Power given by last section extended to survivors devisees, etc.—The powers conferred by the next preceding section shall extend to all and every the person or persons in whom the estate devised is for the time being vested by survivorship, descent or devise, or to any person or persons appointed under any power in the will or by the supreme court to succeed to the trusts created by the will as aforesaid. 1903, Sess. 2, c. 11, s. 36.

37. Purchasers, etc., not bound to inquire as to exercise of powers.—Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the preceding two sections of this Ordinance or any of them have been duly and correctly exercised by the person or persons acting in virtue thereof. 1903, Sess. 2, c. 11, s. 37.

38. Directions to sell, etc., may be exercised by executor when no other person is appointed to exercise same.—Where there is in any will or codicil of any deceased person whether such will has been made or such person has died before or after the passing of this Ordinance any direction whether express or implied to sell, dispose of, appoint, mortgage, incumber or lease any real estate and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute and carry the same into effect the executor or executors, if any, named in such will or codicil shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incumber, or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect. 1903, Sess. 2, c. 11, s. 38.

39. Administrator with will annexed may exercise power of sale given to the executor.—Where there is in any will or codicil thereto of any deceased person whether such will has been made or such person has died before or after the passing of this Ordinance any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and where from any cause letters of administration with such will annexed have been by the supreme court committed to any person and such person has given the required security such person shall and may exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect for all purposes as the said executor or executors might have done. 1903, Sess. 2, c. 11, s. 39.

40. Or when no one named in the will to execute powers of sale, etc. Where there is in any will or codicil thereto of any

deceased person whether such will has been made or such person has died before or after the passing of this Ordinance any power to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein whether such power is express or arises by implication and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute such power and letters of administration with such will annexed have been by the supreme court committed to any person and such person has given the required security before mentioned such person shall and may exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein in as full, large and ample a manner and with the same legal effect as if such last named person had been appointed by the testator to execute such power. 1903, Sess. 2, c. 11, s. 40.

41. Executors, etc., may convey in pursuance of a contract for sale made by deceased.—Where any person has entered into a contract in writing for the sale and conveyance of real estate or any estate or interest therein and such person has died intestate or without providing by will for the conveyance of such real estate or estate or interest therein to the person entitled or to become entitled to such conveyance under such contract then if the deceased would be liable to execute a conveyance were he alive, the executor, administrator or administrator with the will annexed, as the case may be, of such deceased person shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates and of such nature as the said deceased if living would be liable to give and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof and had executed the same but shall not have any further validity. 1903, Sess. 2, c. 11, s. 41.

42. Duties and liabilities of an executor and administrator acting under the powers of this Ordinance.—Every executor, administrator and administrator with the will annexed shall as respects the additional powers vested in him by this Ordinance and any money or assets by him received in consequence of the exercise of such powers be subject to all the liabilities and compellable to discharge all the duties of whatsoever kind which as respects the acts to be done by him under such powers would have been imposed upon an executor or other person appointed by the testator to execute the same or in case of there being no such executor or person would have been imposed by law or by the supreme court or a judge thereof. 1903, Sess. 2, c. 11, s. 42.

43. Powers given by this Ordinance to two or more survivors.—Where there are several executors, administrators or administrators with the will annexed and one or more of them die the powers hereby created shall vest in the survivor or survivors. 1903, Sess. 2, c. 11, s. 43.

44. In case of deficiency of assets debts in rank "pari passu."—Not to affect lien.—On the administration of the estate of a deceased person in case of the deficiency of assets, debts due to the crown and to the executor or administrator of the deceased person and debts to others including therein respectively debts by judgment or order and other debts of record, debts by specialty, simple contract debts and such claims for damages as by statute are payable in like order of administration as simple contract debts shall be paid *pari passu* and without any preference or priority of debts

of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate. 1903, Sess. 2, c. 11, s. 44.

45. If claim is rejected and notice given an action must be brought within a certain period.—In case the executor or administrator gives notice in writing referring to this section of his intention to avail himself thereof to any creditor or other person of whose claims against the estate he has notice or to the advocate or agent of such creditor or other person that he the executor or administrator rejects or disputes the claim it shall be the duty of the claimant to commence his action in respect of the claim within six months after the notice is given in case the debt or some part thereof is due at the time of the notice or within three months from the time the debt or some part thereof falls due if no part thereof is due at the time of the notice and in default the claim shall be forever barred.

(2) Unless such creditor or other person within ten days after the receipt of such notice notifies the executor or administrator that he withdraws his claim such executor or administrator may if he thinks fit apply to a judge of the supreme court for an originating summons calling upon such creditor or other person to establish his claim and upon the return of such summons the judge may allow or bar the claim or make such other order as to him may seem meet with or without costs against either party. 1903, Sess. 2, c. 11, s. 45.

46. As to liability of executor or administrator in respect of covenants, etc., in leases.—Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered has satisfied all such liabilities under the said lease or agreement for a lease as have accrued due and been claimed up to the time of the assignment hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised although the period for laying out the same may not have arrived and has assigned the lease or agreement for the lease to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and among the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not after having assigned the said lease or agreement for a lease and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. 1903, Sess. 2, c. 11, s. 46.

47. As to liability of executor in respect of rents, etc., in conveyances on rent, charges, etc.—In like manner where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance or rent-charge whether any such rent be by limitation of use, grant or reservation or agreement

for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered has satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived and has conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof he shall be at liberty to distribute the residuary estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part or any further part, as the case may be, of the estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not after having made or executed such conveyance or assignment and having where necessary set apart such sufficient fund as aforesaid be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed. 1903, Sess. 2, c. 11, s. 47.

SUMMARY APPLICATION TO COURT FOR ADVICE.

48. Trustees, etc., may apply for advice in management of trust property.—Any trustee, guardian, executor or administrator shall be at liberty without the institution of an action to apply in court or in chambers in the manner prescribed by rules of court for the opinion, advice or direction of a judge of the supreme court on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

(2) The trustee, guardian, executor or administrator acting upon the opinion, advice or direction given by the judge shall be deemed so far as regards his own responsibility to have discharged his duty as such trustee, guardian, executor or administrator in the subject matter of the said application; but this provision shall not extend to indemnify a trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid if the trustee, executor or administrator has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. 1903, Sess. 2, c. 11, s. 48.

ALLOWANCE TO TRUSTEES, ETC.

49. Allowance to trustees.—Any trustee under a deed, settlement or will, any executor or administrator, any guardian appointed by any court and any testamentary guardian or other trustee howsoever the trust is created shall be entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by the supreme court or a judge thereof or by any clerk thereof to whom the matter may be referred. 1903, Sess. 2, c. 11, s. 49.

50. Allowance to be made although the estate not before

the court.—A judge of the Supreme Court may on application to him for the purpose settle the amount of such compensation although the trust estate is not before the court in any action. 1903, Sess. 2, c. 11, s. 50.

51. Act to apply to existing as well as future trusts.—Compensation may be allowed in the case of any trust heretofore created as well as in any to be hereafter created. 1903, Sess. 2, c. 11, s. 51.

52. Judge may order an allowance to be made to executor or administrator out of the estate for his trouble.—The judge may allow to the executor or trustee or administrator acting under a will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration and in administering, disposing of and arranging and settling the same and generally in arranging and settling the affairs of the estate and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator in passing his accounts. 1903, Sess. 2, c. 11, s. 52.

53. Where allowance fixed by the instrument.—Nothing in the next preceding four sections shall apply to any case in which the allowance is fixed by the instrument creating the trust. 1903, Sess. 2, c. 11, s. 53.

54. Advocate entitled to profit costs.—In addition to any allowance a trustee who is an advocate shall also be entitled to profit costs for any professional work done in connection with the trust. 1903, Sess. 2, c. 11, s. 54.

LIMITATION OF ACTIONS.

55. Application of statutes of limitations to certain actions against trustees.—In any action or other proceeding against a trustee or any person claiming through him except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy or is to recover trust property or the proceeds thereof still retained by the trustee or previously received by the trustee and converted to his use the following provisions shall apply:

(a) The law relating to the limitation of actions shall apply in the like manner and to the like extent as it would in such action or other proceeding if the trustee or person claiming through him had not been a trustee or a person claiming through a trustee:

(b) If the action or other proceeding is brought to recover money or other property and is one to which no law relating to the limitation of actions applies the trustee or person claiming through him shall be entitled to the benefit of and be at liberty to plead the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(2) No beneficiary as against whom there would be a good de-

fence by virtue of this section shall derive any greater or any other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action or other proceeding and this section had been pleaded.

(3) This section shall apply only to actions or other proceedings commenced after the passing of this Ordinance and shall not deprive any executor or administrator of any right or defence to which he is entitled under any law relating to limitation of actions. 1903, Sess. 2, c. 11, s. 55.

JUDICIAL TRUSTEES.

56. Power of the court on application to appoint judicial trustee.— Where application is made to the supreme court or a judge thereof by or on behalf of the person creating or intending to create a trust or by or on behalf of a trustee or beneficiary the court or judge may in its or his discretion appoint a person (in this Ordinance called a judicial trustee) to be a trustee of said trust either jointly with any other person or as sole trustee and if sufficient cause is shown in place of all or any existing trustees.

(2) The administration of the property of a deceased person whether a testator or intestate shall be a trust and the executor or administrator a trustee within the meaning of this section.

(3) Any fit and proper person nominated for the purpose in the application may be appointed a judicial trustee and in the absence of such nomination or if the court or judge is not satisfied of the fitness of a person so nominated an official of the court or other competent person may be appointed and in any case a judicial trustee shall be subject to the control and supervision of the court as an officer thereof.

(4) The court or judge may either on request or without request give to a judicial trustee any general or special directions in regard to the trust or the administration thereof.

(5) There may be paid to a judicial trustee out of the trust property such remuneration not exceeding the prescribed limits as the court or judge may assign in each case and the remuneration so assigned to any judicial trustee shall save as the court or judge may for special reasons otherwise order cover all his work and personal outlay.

(6) Once in every year the accounts of every trust of which a judicial trustee has been appointed shall be audited and a report thereon made to the court by the prescribed persons and in any case where the court or judge shall so direct an inquiry into the administration by a judicial trustee of any trust or into any dealing or transaction of a judicial trustee shall be made in the prescribed manner. 1903, Sess. 2, c. 11, s. 56.

MANITOBA

MANITOBA.

R. S. M. 1902, CHAP. 170.

AN ACT RESPECTING TRUSTEES, EXECUTORS, ADMINISTRATORS AND OTHER PERSONS OCCUPYING FIDUCIARY POSITIONS.

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His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as "The Manitoba Trustee Act." R. S. M., c. 146, s. 1.

INTERPRETATION.

2. Interpretation.—In this Act, unless the context otherwise requires,—

(a) "**Will**," "**real estate**," "**personal estate**," "**person**," "**testator**."—The expressions "will," "real estate," "personal estate," "person" and "testator" have the meanings assigned to them respectively by "The Manitoba Wills Act." R. S. M., c. 146, s. 2.

APPOINTMENT OF NEW TRUSTEES.

3. Appointment of new trustee by surviving trustee, &c.—Where a trustee, either original or substituted, and whether appointed by the Crown or otherwise, is dead, or remains out of the Province of Manitoba for more than twelve months, or desires to be discharged from the trust or powers reposed in or conferred upon him, or refuses or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for this purpose by

the instrument, if any, creating the trust, or, if there be no such person, or no such person able and willing to act, then the surviving or continuing trustees or trustee for the time being, or the personal representative of the last surviving and continuing trustee, may by writing appoint another person or other persons a trustee or trustees in place of the trustee dead, remaining out of the Province of Manitoba, desiring to be discharged, refusing, or being unfit, or being incapable, as aforesaid. R. S. M., c. 146, s. 3.

4. Trustees may be increased.—Upon the above appointment of a new trustee, the number of trustees may be increased. R.S.M., c. 146, s. 4.

5. Not necessary to fill up number of trustees.—Upon the above appointment of a new trustee, it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under the foregoing provisions of this Act from his trust, unless there will be at least two trustees to perform the trust. R. S. M., c. 146, s. 5.

5. Vesting property in new trustee.—On the appointment of a new trustee any assurance or thing requisite for vesting the trust property or any part thereof jointly in the persons who are the trustees shall be executed or done. R. S. M., c. 146, s. 6.

7. Powers of new trustee.—Every new trustee so appointed, as well before as after all the trust property becomes by law or by assurance or otherwise vested in him, shall have the same powers, authorities and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument, if any, creating the trust. R. S. M., c. 146, s. 7.

8. Trustee dying before testator.—The provisions of this Act relative to a trustee who is dead include the case of a person nominated trustee in a will by dying before the testator; and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in execution of the foregoing provisions of this Act. R. S. M., c. 146, s. 8.

9. Contrary provisions saved.—The foregoing provisions of this Act apply only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained. R. S. M., c. 146, s. 9.

VESTING OF ESTATE.

10. Property vesting in personal representative.—Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seized in fee simple, such hereditament shall vest in the legal personal representative from time to time of such trustee. R. S. M., c. 146, s. 10.

11. Conveyances by married women as trustees.—Where any freehold hereditament is vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance. R. S. M., c. 146, s. 11.

POWERS OF TRUSTEES, ET AL.

12. Discharges by trustees.—The receipt in writing of any trustees or trustee for any money, securities or other personal property or effects, payable, transferable or deliverable to them or him under any trust or power shall be sufficient discharge for the same, and shall effectually exonerate the person paying, transferring or delivering the same from seeing to the application, or being answerable for any loss or misapplication, thereof. R. S. M., c. 146, s. 12.

13. Assignment and release of mortgages of a deceased mortgagee.—Where any person entitled to any freehold land by way of mortgage has departed or shall depart this life, and his executor or administrator has or shall become entitled to the money secured by the mortgage, or has assented or shall assent to a bequest thereof, or has assigned the mortgage debt, such executor or administrator, if the mortgage money was paid to the testator or intestate in his lifetime, or on payment of the principal money and interest due on the mortgage, or on receipt of the consideration money for the assignment, may convey, assign, release or discharge the mortgage debt and convey the legal estate in the land; and such executor or administrator shall have the same power as to any portion of the lands on payment of some part of the mortgage debt, or on any arrangement for exonerating the estate or any part of the mortgaged lands without payment of money; and such conveyance, assignment, release or discharge shall be as effectual as if the same had been made by the person having the legal estate.

Proviso.—Provided, however, that nothing herein contained shall have the effect of declaring that this section as heretofore at any time in force did not apply to the future as well as the past. R. S. M., c. 146, s. 13.

14. Certificates of payment and discharge.—Every certificate given by the mortgagee or his assignee, his executors, administrators or assigns, or any one or more of them, of payment or discharge of a mortgage, or of the conditions therein, or of the lands or any part of the same, or of any part of the money, at whatsoever times given and whether before or after the time limited by the mortgage for payment or performance, shall, if in conformity with the laws relating to lands in Manitoba, be valid to all intents and purposes whatsoever. R. S. M., c. 146, s. 14.

15. Executor may sell, appoint, lease or dispose of real estate.—Whenever there is in any will or codicil of any deceased person any direction, whether express or implied, to sell, dispose of, appoint, mortgage, incurber or lease any real estate, and no person is by the said will or some codicil thereto, or otherwise, appointed by the testator to execute and carry the same into effect, the executor or executors, if any, named in such will or codicil shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incurber or lease such real estate and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect, as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect. R. S. M., c. 146, s. 15.

16. Power to sell, &c., may be carried out by executor, "et al."—Whenever there is in any will or codicil thereto of any deceased person any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incurber or lease any real

estate, or any estate or interests therein, whether such power is express or arises by implication, and whether the will or codicil actually appoints an executor or executors or not, and wherever, from any cause, letters of administration with such will annexed have been by a court of competent jurisdiction in Manitoba committed to any person, and such person has given the additional security required by a Surrogate Court or a Judge thereof, such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect for all purposes, as the said executor or executors might have done. R. S. M., c. 146, s. 16.

17. Executor appointed by the Court may carry out powers in will, &c.—Whenever there is in any will or codicil thereto of any deceased person any power to sell, dispose of, appoint, mortgage, incumber or lease any real estate or any estate or interest therein, whether such power is express or arises by implication, and no person is by the said will or some codicil thereto or otherwise by the testator appointed to execute such power, and letters of administration with such will annexed have been by a court of competent jurisdiction in Manitoba committed to any person, and such person has given the additional security required by a Surrogate Court or a Judge thereof, such person shall and may exercise every such power and sell, dispose of, appoint, mortgage, incumber or lease such real estate and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect, as if such last named person had been appointed by the testator to execute such power. R. S. M., c. 146, s. 17.

18. Trustees may provide out of estate for charges under a will becoming operative since 15th July, 1870. Where by any will coming into operation after the fifteenth day of July, in the year one thousand eight hundred and seventy, a testator charges or has charged his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises or has devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and does not make any provision for the raising of such debt, legacy or sum of money out of such estate, the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, may raise such debt, legacy or money as aforesaid by a sale and absolute disposition by public auction or private contract of the said real estate or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other; and any deed or deeds of mortgage so executed may stipulate for such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper. R. S. M., c. 146, s. 18.

19. Power of administrator to sell real estate.—Repealed by 5 and 6 Edw. VII., c. 21, s. 2; see now sec. 25 of the Devolution of Estates Act.

20. Power of administrator to mortgage.—An administrator in whom the real estate of an intestate person is, or may hereafter be, vested under any law of this Province shall have and shall be deemed always to have had full power to mortgage such real estate for the purpose of paying debts, taxes or other incumbrances, and shall have the power to release equities of redemption, and shall also

have the power to mortgage such real estate for the purpose of raising money to pay for any necessary and proper repairs or improvements to any such real estate:

(a) Provided, however, that nothing herein contained shall have the effect of preventing any beneficiary from taking proceedings to restrain the administrator from mortgaging on the ground that such mortgage is unnecessary, or not in his interest;

(b) Provided, also, that such mortgage to raise money to pay for improvements or repairs as aforesaid, and such release shall not be valid, unless they are made with the approval of the district registrar of the land titled district in which the land in question lies or, if the land is not in a land titles district, then of the district registrar for the land titles district of Winnipeg;

(c) Provided, also, that nothing in this section contained shall derogate from any right or power possessed by any administrator before the twenty-seventh day of April, in the year one thousand eight hundred and ninety-eight.

(d) This section shall not affect or apply to any action, suit, matter or proceeding pending in any court or land titles office in this Province on said last above mentioned date. 61 V., c. 15, s. 1; 63 and 64 V., c. 9, s. 4.

21. Conveyances under agreements for sale by deceased person.—Wherever any person has entered into a contract in writing for the sale and conveyance of real estate or of any estate or interest therein, and such person has died intestate or without providing by will for the conveyance of such real estate, or estate or interest therein, to the person entitled or to become entitled to such conveyance under such contract, then, whenever upon the supposition of the deceased being alive he would be liable to execute a conveyance, the executor, administrator or administrator with the will annexed, as the case may be, of such deceased person shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates and of such nature as the said deceased, if living, would be liable to give, but without covenants except as against the acts of the grantor; and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof and had executed, the same, but shall not have any further validity. R. S. M., c. 146, s. 19.

22. Operation of receipts by persons to whom money payable upon any trust.—The *bona fide* payment of any money to, and the receipt thereof by, any person to whom the same is payable upon any expressed or implied trust or for any limited purpose, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary is expressly declared by the will or instrument creating the trust. 57 V., c. 37, s. 1, part.

23. Operation of receipts by executors for the payment of money charged on real estate.—The *bona fide* payment of any money to, and the receipt thereof by the executor or executors for the time being named in any will, heretofore made or hereafter made, wherein or whereby the testator charges his real estate or any portion thereof with the payment of his debts or with the payment of any legacy or any specific sum of money and devises the whole or a portion to such executor or executors either as beneficiary or beneficiaries or otherwise, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary is expressly declared by such will. 57 V., c. 37, s. 1, part.

24. Executors and administrators may be compelled to discharge duties.—Every executor, administrator and administrator with the will annexed shall, as respects the additional powers vested in him by this Act and any money or assets by him received in consequence of the exercise of such powers, be subject to all the liabilities and compellable to discharge all the duties of whatsoever kind which, as respects the acts to be done by him under such powers, would have been imposed upon an executor or other person appointed by the testator to execute the same or, in case of there being no such executor or person, would have been imposed by law upon any person appointed by law or by any court or Judge of competent jurisdiction to execute such powers. R. S. M., c. 146, s. 20.

25. Surviving executor or administrator may perform trusts.—Where a power or trust is given to or vested in two or more executors, administrators or administrators with the will annexed or trustees jointly, either by virtue of the instrument under which they were appointed or otherwise howsoever, then, unless the contrary is expressed in the instrument, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. R. S. M., c. 146, s. 21.

INVESTMENTS.

26. "Trustee" defined.—In the three next following sections of this Act the word "trustee" shall extend to and include an executor, administrator or guardian or other person having trust funds or property in his custody or control. 1 and 2 Ed. VII., c. 54, s. 1.

27. Investments by trustees.—Trustees having trust money in their hands, which it is their duty or which it is in their discretion to invest at interest, shall be at liberty at their discretion to invest the same in any stock, debenture or securities of the Government of the Dominion of Canada or of this Province or of any of the other Provinces of Canada, or in debentures or securities the payment of which is guaranteed by the Government of the Dominion of Canada or of this Province or of any of the other Provinces of Canada, or in the debentures of any municipality in this Province or in the debentures of any school district comprising an incorporated city or town in this Province or in securities which are a first charge on land held in fee simple, provided that such investments are in other respects reasonable and proper; and such trustees shall also be at liberty at their discretion to call in any trust funds invested in any other securities than as aforesaid and to invest the same in any such stock, debentures or securities aforesaid, and also from time to time at their discretion to vary any such investments as aforesaid for others of the same nature; and any such moneys already invested in any such stock, debentures or securities as aforesaid shall be held and taken to have been lawfully and properly invested. 1 and 2 Ed. VII., c. 54, s. 2; c. 55, s. 1. (As amended by 5-6 Edw. VII., c. 92, s. 1.)

28. As to loans of trust funds upon real estate security.—No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee acted upon a report as to the value of the property made by a person whom the trustee reason-

ably believed to be an able, practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan did not exceed one-half of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report. This section shall apply to a loan upon any property on which the trustee can lawfully lend. But nothing herein contained shall affect the duty of trustees to see to the protection of the securities by insurance against fire, in case buildings form part of such securities.

(a.) **Application of section.**—This section shall apply to transfers of existing securities as well as to new securities, and to investments made before as well as after the nineteenth day of February, in the year one thousand nine hundred and two, unless some action or other proceeding was pending with reference thereto on the said last mentioned date. 1 and 2 Ed. VII., c. 54, s. 3.

29. Not to purchase stock.—Nothing in this Act shall be deemed or understood to empower any administrator or executor, guardian or trustee, to purchase any bank or other stock with moneys entrusted to him or them as such administrator, executor, guardian or trustee as aforesaid. R. S. M., c. 146, s. 24.

30. May invest in company's debentures.—Any trustee, guardian, executor or administrator may invest any trust fund in first debentures of any building society or loan company duly incorporated under the laws of this Province or of the Dominion of Canada, and doing business in this Province, which is authorized to lend its money on the security of real estate, having a capitalized, fixed and permanent stock not liable to be withdrawn therefrom, amounting to at least one hundred thousand dollars, with not less than one hundred thousand dollars paid up thereon; and he shall not on account of the investment be liable for a breach of trust, provided that such investment shall in other respects be reasonable and proper and that the debentures are registered and transferable only on the books of such society or company in his name as trustee for the particular trust estate for which they are held. R. S. M. c. 146, s. 25.

31. Powers limited by will or instrument creating trust.—None of the powers by the last four preceding sections conferred shall take effect or be exercisable by virtue of this Act by any guardian, trustee, executor or administrator, if it be expressly declared in the deed, will or other instrument creating such guardian, trustee executor or administrator that he shall not have such power. R. S. M., c. 146, s. 26.

32. Limitation of liability of trustee for excessive loans.—Where a trustee has improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest.

(a.) This section shall apply to investments made before as well as on and after the nineteenth day of February, in the year one thousand nine hundred and two, unless some action or other proceeding was pending with reference thereto on the said last mentioned date. 1 and 2 Ed. VII., c. 54, s. 4.

33. No liability for retaining an investment which has

ceased to be one authorized.—No executor, administrator or trustee shall be liable for any breach of trust by reason only of his continuing to hold an investment which has ceased to be one authorized by the instrument of trust or by the general law, and this provision shall apply to cases arising either before or after the passing of this Act. 1 and 2 Ed. VII., c. 55, s. 4.

34. How trust companies may invest trust funds.—Every trust company may invest any trust moneys in its hands in any securities in which private trustees may by law invest trust moneys and may also invest such moneys in the public stock, funds or Government securities of any of the Provinces of the Dominion, or in any securities guaranteed by the United Kingdom of Great Britain and Ireland or by the Dominion or by any of the said Provinces, or in the bonds or debentures of any municipal corporation in any of the said Provinces. 1 and 2 Ed. VII., c. 55, s. 2.

35. As to deposits with trust companies.—Trust companies shall not receive any moneys on deposit at interest, but this shall not prevent them receiving money for investment and they may allow the persons or corporations from whom such moneys are received interest thereon. 1 and 2 Ed. VII., c. 55, s. 3.

ADMINISTRATION.

36. Payment of claims.—An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient. R. S. M., c. 46, s. 27.

37. May accept composition, allow time, submit to arbitration, &c.—Executors or administrators or trustees or a majority of them acting together, or a sole acting trustee where, by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition, or any security real or personal, for any debt, or for any property real or personal, claimed, and may allow any time for payment of any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle, any debt, account, claim or thing whatever relating to the testator's estate or to the trust, and for any of those purposes may enter into, give, execute and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith. R. S. M., c. 146, s. 23.

38. Proviso where contrary intention is expressed.—As regards trustees, the two last preceding sections apply only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained. R. S. M., c. 146, s. 29.

39. Distribution of assets "pari passu."—On the administration of the estate of any deceased person, who died since the twenty-eighth day of May in the year one thousand eight hundred and eighty-six or who shall hereafter die, in case of a deficiency of assets debts due to the Crown and to the executor or administrator of the deceased person, and debts to others, including therein respectively debts by judgment, decree or order, and other debts of record, debts by specialty, simple contract debts and such claims for damages as by statute are payable in like order of administra-

tion as simple contract debts, shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate. R. S. M., c. 146, s. 30.

40. Proceedings on notice of disputing claim.—In case the executor or administrator gives notice in writing to any creditor or other person of whose claim against the estate such executor or administrator has notice, or to the attorney or agent of such creditor or other person, that the said executor or administrator rejects or disputes such claim it shall be the duty of the claimant to commence his suit in respect of such claim within six months after such written notice was given, in case the debt or some part thereof was due at the time of the notice, or within six months from the time the debt or some part thereof falls due if no part thereof was due at the time of the said notice and shall serve the first proceeding in such suit within one month thereafter; and in default the said claim shall be forever barred. R. S. M., c. 146, s. 31.

41. Distribution of trust estate after notice.—Not liable where claims are not filed.—Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or a particular class or classes of creditors, where the creditors are not designated by name therein, or an executor or an administrator has given such or the like notices as in the opinion of the court in which such trustee, assignee, executor or administrator is sought to be charged, would have been given by the Court of King's Bench in a suit for the execution of the trusts of such deed or assignment or an administration suit, as the case may be, for creditors and others to send in to such trustee, assignee, executor or administrator their claims against the person for the benefit of the creditors for whom such deed or assignment is made or against the estate of the testator or intestate, as the case may be, such trustee, assignee, executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the proceeds of the trust estate, or the assets of the testator or intestate, as the case may be, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such trustee, assignee, executor or administrator has then notice and shall not be liable for the proceeds of the trust estate or assets, as the case may be, or any part thereof, so distributed to any person of whose claim such trustee, assignee, executor or administrator had not notice at the time of the distribution thereof, or a part thereof, as the case may be; but nothing in this Act contained shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets, as the case may be, or any part thereof, into the hands of the person or persons who may have received the same respectively. R. S. M., c. 146, s. 32.

APPLICATIONS TO A JUDGE.

42. Application to Judge for advice.—Any trustee, executor or administrator, or any guardian appointed by any court, or any testamentary guardian, shall be at liberty without the institution of a suit, to apply by summons, upon a written statement, to any Judge of the Court of King's Bench for the opinion, advice and direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, or his guardianship. R. S. M., c. 146, s. 33.

43. Certificate of counsel with application.—Such statement shall be accompanied by a certificate of counsel to the effect that in his judgment the case stated is a proper one for the opinion, advice or direction of the Judge under this Act. R. S. M., c. 146, s. 34.

44. Parties to be served.—Such summons shall be served upon all persons interested in such application, or such of them as the said Judge thinks expedient. R. S. M., c. 146, s. 35.

45. Proceedings on such application.—Upon application before such Judge of any person summoned as aforesaid, it shall be lawful for the said Judge to examine persons upon oath and to order the production of documents. R. S. M., c. 146, s. 36.

46. Costs.—The costs of such application shall be in the discretion of the Judge to whom the application is made. R. S. M., c. 146, s. 37.

47. Liability of trustee acting on advice.—Proviso.—The trustee, executor, administrator or guardian, acting upon the opinion, advice or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, administrator or guardian in the subject matter of the said application; but this provision shall not extend to indemnify any trustee, executor, administrator or guardian in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if such trustee, executor, administrator or guardian has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. R. S. M., c. 146, s. 38.

REMUNERATION.

48. Meaning of "trustee."—In the four next following sections the term "trustee" shall include any trustee under a deed, settlement or will, and executors and administrators, and any guardians appointed by any court, and a testamentary guardian, or any other trustee, howsoever the trust is created. R. S. M., c. 146, s. 39.

49. Compensation of trustee.—A trustee shall be entitled to such fair and reasonable allowance for his care, pains and trouble and his time expended in and about the trust estate as may be allowed by the Court of King's Bench, or any Judge or master thereof to whom the matter may be referred. R. S. M., c. 146, s. 40.

50. Settling compensation.—A Judge of the Court of King's Bench may, on application to him for the purpose, settle the amount of such compensation, although the trust estate is not before the court in any suit. R. S. M., c. 146, s. 41.

51. Compensation when fixed by deed.—Nothing in the three last preceding sections shall apply to any case in which the rate of allowance is fixed by the instrument creating the trust. R. S. M., c. 146, s. 42.

52. Compensation allowed by Judge of Surrogate Court.—The Judge of any Surrogate Court may allow to the executor, trustee or administrator acting under will or letters of administration a fair and reasonable allowance for his care, pains and trouble and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under any will or letters of administration, and in administering, disposing of and arranging and settling the same, and, generally, in arranging and set-

ting the affairs of the estate, and therefor may make an order or orders from time to time; and the same shall be allowed to an executor, trustee or administrator in passing his accounts. R. S. M., c. 146, s. 43.

POWERS OF ATTORNEY.

53. Power of attorney affecting heirs and devisees.—

In case a power of attorney, for the sale or management of real or personal estate or for any other purposes, provides that the same may be exercised in the name and on behalf of the heirs or devisees, executors or administrators, of the person executing the same, or provides by any form of words that the same shall not be revoked by the death of the person executing the same, such provision shall be valid and effectual to all intents and purposes, both at law and in equity, according to the tenor and effect thereof, and subject to such conditions and restrictions, if any, as may be therein contained. R. S. M., c. 146, s. 44.

56. Acts of attorney or agent after death of principal valid in certain cases.—Independently of any such special provision in a power of attorney, every payment made and every act done under and in pursuance of any power of attorney, or any power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created, after the death of the person who gave such power or created such agency, or after he has done some Act to avoid the power or agency; shall, notwithstanding such death or act last aforesaid, be valid as respects every person, party to such payment or act, to whom the fact of the death or of the doing of such act as last aforesaid was not known at the time of such payment or act *bona fide* done as aforesaid, and as respects all claiming under such last mentioned person. R. S. M., c. 146, s. 45.

55. Payments to agent valid, if made "bona fide."—Any person making or doing any payment or act in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind or bankrupt, or had revoked the power, if the fact of death, lunacy, unsoundness of mind, bankruptcy or revocation was not at the time of the payment or act known to the person making or doing the same:

Proviso.—Provided that this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him. R. S. M., c. 146, s. 46.

56. Operation of power of attorney respecting property acquired by donor after execution of power of attorney.—Every power of attorney shall, unless otherwise expressed, confer upon the donee of such power the same rights and powers in respect to property acquired by the donor of such power after the execution of such power of attorney as is conferred upon the said donee by such power of attorney in respect to the property owned by the donor at the time of the execution of such power of attorney.

(a) **Application of foregoing provisions.**—This section shall apply, except as hereinafter mentioned, to all conveyances, deeds, instruments and assurances heretofore made or executed by any per-

son acting under or purporting to act under a power of attorney, as well as to all conveyances, deeds, instruments and assurances hereafter made or executed.

(b) This section shall not apply to any conveyance, deed, instrument or assurance, transaction or matter which had, prior to the second day of March in the year one thousand eight hundred and ninety-four, been attacked, called in question, or involved in litigation in any court in Canada. 57 V., c. 37, s. 2.

RIGHTS OF ACTION AND DISTRESS.

57. Action of trespass by representatives.—In case of an injury to the real estate of any person committed within six months next prior to his decease, his executors or administrators may maintain an action of trespass or of trespass on the case therefor, according to the nature of the injury, if brought within one year after his decease; and the damages when recovered, shall be part of his personal estate. R. S. M., c. 146. s. 47.

58. Action against representatives for torts.—In case any deceased person, within six months next previous to his decease, committed a wrong to another person in respect of such other person's real or personal property, the person so wronged may, within six months after the executors or administrators of the person who committed the wrong have taken upon themselves the administration of his estate and effects, maintain an action therefor of trespass or of trespass on the case, according to the nature of his wrong, against such executors or administrators; and the damages recovered in such action shall be payable in like order of administration as the debts of deceased persons. R. S. M., c. 146. s. 48.

59. Distress for rent.—The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrearages of such rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done if living. R. S. M., c. 146. s. 49.

60. Distress within six months.—Such arrearages may be distrained for at any time within six months after the determination of the term or lease, and during the continuance of the possession of the tenant from whom the arrears became due; and the powers and provisions contained in the several statutes relating to distresses for rent shall be applicable to the distresses so made as aforesaid. R. S. M., c. 146. s. 50.

LIABILITY OF ESTATES OF SOME OF SEVERAL JOINT DEBTORS.

61. Actions on covenants against representatives.—Proviso.—In case any one or more of several joint covenanters, contractors, obligors or partners die, the person interested in the covenant, contract, obligation or promise entered into by such joint covenantors, contractors, obligors or partners may proceed by action against the representatives of the deceased covenantor, contractor, obligor or partner, in the same manner as if the covenant, contract, obligation or promise had been joint and several, and this notwithstanding there may be another person liable under such covenant, contract, obligation or promise still living, and an action pending against such person; but the property and effects of stock-

holders in chartered banks, or the members of other incorporated companies, shall not be liable to a greater extent than they would have been if this section had not been passed. R. S. M., c. 146, s. 51.

RETROACTIVE EFFECT OF CERTAIN SECTIONS.

62. Retroactive effect of certain sections.—The sections of this Act numbered from three to twelve and fifteen, sixteen, seventeen, twenty-one, from twenty-four to thirty-one, from thirty-six to thirty-eight and from forty-eight to fifty-two, inclusive of all such numbers, shall apply to powers and trusts created before or after the coming into force of the Act; but nothing herein contained shall apply to or affect acts and things done or completed before the twenty-eighth day of May in the year one thousand eight hundred and eighty-six. R. S. M., c. 146, s. 53, *part*.

63. Retroactive effect of sections 53-55.—The fifty-third, fifty-fourth and fifty-fifth sections of this Act shall apply to all payments made and acts done after the twenty-eighth day of May in the year one thousand eight hundred and eighty-six, pursuant to a power given before, as well as to payments or acts since such date or hereafter made or done under powers since or hereafter given. R. S. M., c. 146, s. 54, *part*.

ONTARIO

R. S. O. 1897, CHAP. 336.

AN ACT FOR THE RELIEF OF TRUSTEES.

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His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short title.—This Act may be cited as "*The Trustee Relief Act.*" New.

2. Interpretation of words Accountant.—The words "The Accountant" in this Act shall mean as regards cases in the High Court of Justice "the Accountant of the Supreme Court of Judicature

for Ontario," and, as regards cases in any County Court, the Clerk or Registrar referred to in Consolidated Rule 1221 (2).

Lands.—The word "lands" shall extend to, and include, messuages, tenements, and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein.

Securities.—The word "Securities" includes stocks, funds and shares.

Stocks.—The word "stock" includes fully paid up shares, and any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein.

Transfer.—The word "transfer" in relation to stock, includes the performance and execution of every deed, power of attorney, act or thing, on the part of the transferror, to effect and complete the title in the transferee.

Seized.—The word "seized" shall be applicable to any vested interest for life, or of a greater description, and shall extend to estates at law, and in equity, in possession, or in futurity, in any lands.

Possessed.—The word "possessed" shall be applicable to any vested estate less than a life estate at law, or in equity, in possession or in expectancy, in any lands.

Contingent right.—The words "contingent right," as applied to lands, shall mean a contingent and executory, interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be, or be not, ascertained; also a right of entry, whether immediate or future, and whether vested, or contingent.

Convey Conveyance.—The words "convey" and "conveyance" applied to any person shall mean the execution by such person of every necessary or suitable assurance for conveying or disposing to another, lands whereof such person is seized, or entitled to a contingent right, either for the whole estate of the person conveying or disposing, or for any less estate, together with the performance of all formalities required by law to the validity of such conveyance.

Assign, Assignment.—The words "assign" and "assignment" shall mean the execution and performance by a person of every necessary or suitable deed or act for assigning, surrendering, or otherwise transferring lands of which such person is possessed, either for the whole estate of the person so possessed, or for any less estate.

Trust.—Trustee.—The word "trust" shall not mean the duties incident to an estate conveyed by way of mortgage; but, with this exception, the words "trust" and "trustee" shall extend to, and include, implied and constructive trusts, and shall extend to, and include, cases where the trustee has some beneficial estate or interest in the subject of the trust, and shall extend to and include the duties incident to the office of personal representative of a deceased person.

Lunatic.—The word "lunatic" shall mean any person who shall have been declared a lunatic.

Person of unsound mind.—The expression "person of unsound mind" shall mean any person, not an infant, who, not having been declared a lunatic, shall be incapable, from infirmity of mind, to manage his own affairs.

Devisee. Imp. Act, 56-57 Vict., c. 53, s. 50, part.—The word “devisee” includes the heir of a devisee, and the devisee of an heir, and any person who may claim right by devolution of title of a similar description.

Mortgage. Imp. Act, 56-57 Vict., c. 53, s. 50.—The word “mortgage” shall be applicable to every estate, interest, or property, in lands or personal estate, which would, in a court of equity, be deemed merely a security for money. Imp. Acts, 13 and 14 Vict., c. 60, s. 2.

3. Jurisdiction of County Courts under Act.—The powers and jurisdiction by this Act conferred on the High Court of Justice may, in cases within the jurisdiction of a County Court, be exercised by any County Court, and all provisions therein contained in reference to the said High Court shall extend, and apply to such County Courts when exercising such jurisdiction. *New.*

PAYMENT INTO COURT BY TRUSTEES.

4. Payment into court by trustees of trust funds or securities.—(1) Trustees, or the majority of trustees having in their hands, or under their control, money or securities belonging to a trust, may apply to the High Court of Justice, *ex parte* in chambers, for an order of the said court authorizing them to pay into, or deposit in, the said court such money or securities; and the same shall, subject to the rules of court, be dealt with according to the orders of the said High Court.

(2.) **Certificate of officer a discharge.**—The certificate of the proper officer shall be a sufficient discharge to trustees for the money, or securities, so paid into, or deposited in, court.

(3.) **Order may be made though some of trustees do not concur. Imp. Acts, 56-57 V., c. 53, s. 42.**—Where any moneys, or securities, are vested in any persons as trustees, and the majority are desirous of paying the same into or depositing the same in court, but the concurrence of the other or others cannot be obtained, the High Court may order the payment into, or deposit in, court, to be made by the majority, without the concurrence of the other or others; and where any such moneys, or securities are deposited with any banker, or broker, or other depositary, the court may order payment, or delivery, of the moneys, or securities, to the majority of the trustees for the purpose of payment into, or deposit in, court and every transfer, payment, and delivery, made in pursuance of such order, shall be valid and take effect as if the same had been made on the authority, or by the act, of all the persons entitled to the moneys, and securities, so transferred, paid, or delivered. Imp. Acts, 10 and 11 Vict., c. 96, ss. 1, 2; 12 and 13 Vict., c. 74, s. 1.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO LAND.

5. Vesting orders as to land, where Court may make. Imp. Act, 56-57 Vict., c. 53, s. 26.—In any of the following cases, namely:—

- (i) Where the High Court appoints or has appointed a new trustee; or
- (ii) Where a trustee entitled to or possessed of any land, or en-

titled to a contingent right therein, either solely, or jointly with any other person.—

- (a) is an infant; or
- (b) is out of Ontario; or
- (c) cannot be found; or

(iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to, or possessed of, any land; or

(iv) Where, as to the last trustee known to have been entitled to, or possessed of, any land, it is uncertain whether he is living, or dead; or

(v) Where there is no heir, or personal representative, of a trustee who was entitled to, or possessed of, land, and has died intestate as to that land, or where it is uncertain who is the heir, or personal representative, or devisee of a trustee who was entitled to, or possessed of, land, and is dead; or

(vi) Where a trustee jointly, or solely, entitled to, or possessed of any land, or entitled to a contingent right therein, has been required by, or on behalf of, a person entitled to require a conveyance of the land, or a release of the right, to convey the land, or to release the right, and has wilfully refused or neglected to convey the land, or release the right, for fourteen days after the date of the requirement;

the High Court may make an order (in this Act called a vesting order) vesting the land in any such person in any such manner, and for any such estate, as the court may direct, or releasing, or disposing of, the contingent right, to such person as the court may direct.

Provided that—

(a) Where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate, as the court may direct, in the persons who, on the appointment, are the trustees; and

(b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of Ontario, or cannot be found, the land or right shall be vested in such other person, either alone, or with some other person. Imp. Act, 13 and 14 Vict., c. 60, ss. 7-18.

6. Where land vested in lunatic trustee or mortgagee, vesting order may be made. Imp. Act, 53 Vict., c. 5, s. 135

(1).—Where any lunatic, or person of unsound mind, shall be seized, or possessed, of any lands upon any trust, or by way of mortgage, the High Court of Justice may make an order that such lands be vested in such person in such manner, and for such estate, as the said court shall direct; and the order shall have the same effect as if the trustee, or mortgagee, had been sane, and had duly executed a conveyance, or assignment, of the lands, in the same manner, for the same estate. Imp. Act, 13 and 14 Vict., c. 60, s. 3.

7. Where lunatic entitled to a contingent right as trustee or mortgagee, Court may order release. Imp. Act, 53 Vict., c. 5, s. 135 (2). Where any lunatic, or person of unsound mind, shall be entitled to any contingent right in any lands upon any trust, or by way of mortgage, the said High Court may make an order wholly releasing such lands from such contingent right, or disposing of the same, to such person as the said court shall direct; and the order shall have the same effect as if the trustee, or mortgagee, had been sane, and had duly executed a deed so releasing, or disposing of, the contingent right. Imp. Act, 13 and 14 Vict., c. 60, s. 4.

8. Orders as to contingent, rights of unborn persons. **Imp. Act, 56-57 Vict., c. 53, s. 27.**—Where the land is subject to a contingent right in an unborn person, or class of unborn persons, who, on coming into existence would, in respect thereof, become entitled to, or possessed of, the land on any trust, the High Court may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to, or of which, the unborn person, or class of unborn persons, would, on coming into existence, be entitled, or possessed, in the land. **Imp. Act, 13 and 14 Vict., c. 60, s. 16.**

9. Vesting order in place of conveyance by infant mortgagee. **Imp. Act, 56-57 Vict., c. 53, s. 28.**—Where any person entitled to, or possessed of, land, or entitled to a contingent right in land, by way of security for money, is an infant, the High Court may make an order vesting, or releasing, or disposing of, the land or right, in like manner as in the case of an infant trustee. **Imp. Act, 13 and 14 Vict., c. 60, ss. 7, 8.**

10. Vesting order in place of conveyance by heir, or devisee of heir, etc., or personal representative of mortgagee. **Imp. Act, 56-57 Vict., c. 53, s. 29.**—Where a mortgagee of land has died without having entered into the possession, or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to any order for the reconveyance of the land, then the High Court may make an order vesting the land in such person or persons, in such manner, and for such estate, as the court may direct in any of the following cases, namely:—

(i) Where an heir, or personal representative, or devisee, of the mortgagee is out of Ontario, or cannot be found; or

(ii) Where an heir, or personal representative, or devisee, of the mortgagee, on demand made by, or on behalf of, a person entitled to require a conveyance of the land, has stated in writing that he will not convey the same, or does not convey the same for the space of fourteen days next after a proper deed for conveying the land has been tendered to him by, or on behalf of the person so entitled; or

(iii) Where it is uncertain which of several devisees of the mortgagee was the survivor; or

(iv) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir, or personal representative, of the mortgagee, whether he is living, or dead; or

(v) Where there is no heir, or personal representative, of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir, or personal representative, or devisee. **Imp. Act, 13 and 14 Vict., c. 60, s. 19**

11. Vesting order consequential on judgment for sale, or mortgage of land. **Imp. Act, 56-57 Vict., c. 53, s. 30.**—Where any court gives a judgment, or makes an order, directing the sale, or mortgage, of any land, every person who is entitled to, or possessed of, the land, or entitled to a contingent right therein as heir, or under the will of a deceased person, for payment of whose debts the judgment was given, or order made, and is a party to the action or proceeding in which the judgment, or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to

be so entitled, or possessed, as the case may be, as a trustee within the meaning of this Act; and the High Court may, if it thinks expedient, make an order vesting the land, or any part thereof, for such estate as that court thinks fit, in the purchaser, or mortgagee, or in any other person. Imp. Acts, 13 and 14 Vict., c. 60, s. 29; and 15 and 16 Vict., c. 55, s. 1.

12. Vesting order consequential on judgment for specific performance, etc. Imp. Act, 56-57 Vict., c. 53, s. 31.—Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange of any land, or, generally, where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election, or otherwise, the High Court may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Act, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will, or voluntary settlement, of any person deceased, who was, during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Act, and thereupon the High Court may make a vesting order relating to the rights of those persons, born, and unborn, as if they had been trustees. Imp. Act, 13 and 14 Vict., c. 60, s. 30.

EFFECT OF VESTING ORDERS OF LANDS.

13. Effect of vesting order. Imp. Act, 56-57 Vict., c. 53, s. 32.—A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the High Court directs, or if there is no such person, or no such person of full capacity, then as if such person had existed, and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the court directs, and shall in every other case have the same effect, as if the trustee, or other person, or description or class of persons, to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order. Imp. Act, 15 and 16 Vict., c. 55, s. 6.

APPOINTMENT OF PERSONS TO CONVEY.

14. Power to appoint person to convey. Imp. Act, 56-57 Vict., c. 53, s. 33.—In all cases where a vesting order can be made under any of the foregoing provisions, the High Court may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance, or release, by that person in conformity with the order shall have the same effect as an order under the appropriate provision. Imp. Act, 13 and 14 Vict., c. 60, s. 20.

VESTING ORDERS AND ORDERS RELEASING CONTINGENT RIGHTS, AS TO STOCKS, AND CHOSSES IN ACTION.

15. Vesting orders as to stock and choses in action, when court may make. Imp. Act, 56-57 Vict., c. 53, s. 35.—(1) In any of the following cases, namely:—

(i) Where the High Court appoints, or has appointed, a new trustee;

(ii) Where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action—

(a) is an infant; or

(b) is out of Ontario; or

(c) cannot be found; or

(d) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled; or

(e) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action, for fourteen days next after an order of the High Court for that purpose has been served on him; or

(iii) Where it is uncertain whether a trustee entitled alone, or jointly with another person, to stock, or to a chose in action, is alive or dead,

the High Court may make an order vesting the right to transfer, or call for a transfer of, stock, or to receive the dividends, or income thereof, or to sue for, or recover, a chose in action, in any such person as the court may appoint:

Provided that—

(a) Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) Where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the court may appoint.

(2) **Appointment of person to transfer.**—In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make, or join in making the transfer.

(3) **Transfer, how to be made.**—The person in whom the right to transfer or call for the transfer, of any stock is vested by an order of the court under this Act, may transfer the stock to himself, or any other person, according to the order, and all incorporated banks, and all companies, shall obey every order under this section according to its tenor.

(4) **After notice of order, no transfer to be made contrary thereto.**—After notice in writing of an order under this section it shall not be lawful for any incorporated bank, or any company, to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(5) **Court may make declaration.**—The High Court may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Act, is to be exercised.

(6) **Ships, shares in.** Imp. Act, 56-57 Vict., c. 53, s. 35.—The provisions of this Act as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping, as if they were stock. Imp. Act, 13 and 14 Vict., c. 60, ss. 20, 22-25.

16. Where lunatic solely entitled as trustee, or mortgagee, to stock, or chose in action, Court may make vesting order. Imp. Act, 53 Vict., c. 5, s. 136 (1), (2).—Where any lunatic, or person of unsound mind, shall be solely entitled to any stock, or to any chose in action, upon any trust, or by way of mortgage, it shall be lawful for the said High Court to make an order vesting in any person the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof; and when any person shall be entitled jointly with any lunatic, or person of unsound mind, to any stock, or chose in action, upon any trust, or by way of mortgage, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof, either in such person so jointly entitled as aforesaid, or in such last mentioned person together with any other person the said court may appoint. Imp. Act, 13 and 14 Vict., c. 60, s. 5.

17. Where stock or chose in action standing in name of personal representative who is lunatic, court may make vesting order. Imp. Act, 53 Vict., c. 5, s. 136 (3).—Where any stock shall be standing in the name of any deceased person whose personal representative is a lunatic, or person of unsound mind, or where any chose in action shall be vested in any lunatic, or person of unsound mind, as the personal representative of a deceased person, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof, in any person the court may appoint. Imp. Act 13 and 14 Vict., c. 60, s. 6.

EFFECT OF VESTING ORDERS OF STOCKS AND CHOSSES IN ACTION.

18. Effect of vesting order. Imp. Act, 56-57 Vict., c. 53, s. 32.—Where any order shall have been made under the provisions of this Act by the said High Court vesting the legal right to sue for, or recover, any chose in action, or any interest in respect thereof, in any person, such legal right shall vest accordingly, and thereupon it shall be lawful for the person so appointed to carry on, commence and prosecute, in his own name any action, or proceeding, for the recovery of such chose in action, in the same manner in all respects as the person in whose place an appointment shall have been made could have sued for, or recovered, such chose in action. Imp. Act, 13 and 14 Vict., c. 60, s. 27.

INDEMNITY.

19. Indemnity. Imp. Act, 56-57 Vict., c. 53, s. 49.—This Act, and every order purporting to be made under this Act, shall be a complete indemnity to all incorporated banks, and to all companies, and persons, for any acts done pursuant thereto; and it

shall not be necessary for any bank, company, or person, to inquire concerning the propriety of the order, or whether the court by which it was made had jurisdiction to make the same. Imp. Act, 15 and 16 Vict., c. 55, s. 7.

DISCHARGE OF LANDS CHARGED WITH PAYMENT OF MONEY, ON PAYMENT INTO COURT.

20. Moneys charged on land, stock, etc., to which infant, or lunatic, entitled, may be paid into Court.—Where any infant, or person of unsound mind, shall be entitled to any money payable in discharge of any lands, stock, or chose in action, conveyed, assigned, or transferred, under this Act, it shall be lawful for the person by whom such money is payable to pay the same into the High Court of Justice in trust in any cause then depending concerning such money, or, if there shall be no cause, to the credit of such infant, or person of unsound mind, subject to the order or disposition of the said court. Imp. Act, 13 and 14 Vict., c. 60, s. 48.

APPOINTMENT OF NEW TRUSTEES, AND VESTING ORDERS.

21. Power of the Court to appoint new trustees. Imp. Act, 56-57 Vict., c. 53, s. 25.—(1) The High Court may, whenever it is expedient to appoint a new trustee, or new trustees, and it is found inexpedient, difficult, or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee, or new trustees, either in substitution for, or in addition to, any existing trustee or trustees, or although there is no existing trustee. In particular, and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3) Nothing in this section shall give power to appoint an executor, or administrator. Imp. Act, 13 and 14 Vict., c. 60, ss. 32, 36 and 15 and 16 Vict., c. 55, s. 9.

WHO MAY APPLY.

22. Who may apply for appointment of new trustee or vesting order, etc.—An order under any of the hereinbefore contained provisions for the appointment of a new trustee, or concerning any lands, stock, or chose in action, subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage. Imp. Act, 13 and 14 Vict., c. 60, s. 37.

23. Application may be by petition.—Any person entitled in manner aforesaid to apply for an order may present a petition in the first instance to the said court for such an order as he may deem himself entitled to, and may give evidence by affidavit, or otherwise, in support of such petition, and may serve such person with notice of such petition as he may deem entitled thereto. Imp. Act, 13 and 14 Vict., c. 60, s. 40.

24. Hearing of petition.—Upon the hearing of any such application the said court may direct a reference to inquire into any facts which require investigation, or may direct the application to stand over to enable fuller evidence to be adduced, or further notice to be served. Imp. Act, 13 and 14 Vict., c. 60, s. 41.

25. Order may be made in any proceeding where necessary facts are proved.—Where in any proceeding the facts necessary for an order under this Act shall appear to the court to be sufficiently proved, the said court may make such order. See Imp. Act, 13 and 14 Vict., c. 60, s. 43.

26. Orders made upon certain allegations to be conclusive evidence. Imp. Act 56-57 Vict., c. 53, s. 40.—Where a vesting order is made as to any land under this Act, founded on an allegation of the personal incapacity of a trustee, or mortgagee, or on an allegation that a trustee, or the heir, or personal representative, or devisee, of a mortgagee is out of Ontario, or cannot be found, or that it is uncertain which of the several trustees, or which of several devisees of a mortgagee, was the survivor, or whether the last trustee, or the heir, or personal representative, or last surviving devisee, of a mortgagee, is living or dead, or on an allegation that any trustee, or mortgagee, has died intestate without an heir, or has died, and it is not known who is his heir, or personal representative, or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the High Court from directing a reconveyance, or the payment of costs occasioned by any such order if improperly obtained. Imp. Act, 13 and 14 Vict., c. 60, s. 44.

27. Court may exercise powers in favor of charities, etc. Imp. Act, 56-57 Vict., c. 53, s. 39.—The High Court may exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action, in the trustee, or trustees, of any charity, or society, over which charity, or society, the said court would have jurisdiction, upon action duly instituted, whether such trustee, or trustees, shall have been duly appointed by any power contained in any deed, or instrument, or by the order, or judgment of the said High Court, or by order made upon a petition to the said court, under any statute authorizing the said court to make an order to that effect in a summary way. Imp. Act, 13 and 14 Vict., c. 60, s. 45.

JUDGMENT IN ABSENCE OF TRUSTEE.

28. Power to give judgment in absence of a trustee. Imp. Act, 56-57 Vict., c. 53, s. 43.—Where, in any action, the High Court is satisfied that diligent search, and inquiry, has been made after any person, who, in the character of a trustee, is made a defendant in any action, to serve him with the process of the court, and that he cannot be found, the court may hear and determine the action, and give judgment therein against that person in his char-

acter of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. Imp. Act, 13 and 14 Vict., c. 60, s. 49.

COSTS.

29. Jurisdiction as to costs. Imp. Act, 56-57 Vict., c. 53, s. 38.—The High Court may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, assignments and transfers, to be made in pursuance of this Act, or any of them, to be paid and raised out of, or from the lands, or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or in such manner as the said court shall think proper. Imp. Act, 13 and 14 Vict., c. 60, s. 51.

PROCEDURE ON TRUSTEES PAYING MONEY INTO COURT.

30. Applications to pay money into Court under Trustee Relief Act, how to be made.—(1) Subject to Rules of Court the following procedure shall be observed:—

On an application to pay money into court or to deposit securities in court under this Act, the applicant shall file an affidavit entitled in the High Court of Justice. "In the matter of (*specifying shortly the trust and the instrument creating it*)," which affidavit shall set forth:—

(i) The deponent's name and address.

(ii) The amount and description of the moneys or securities in question.

(iii) A statement whether the estate or succession duty (if chargeable) or any part thereof has been paid.

(iv) The names and addresses, as far as known to the deponent, of all persons interested in, or entitled to, the moneys or securities in question; and whether or not such persons are under any disability, by reason of infancy, or unsoundness of mind, to the best of his knowledge and belief.

(v) His submission to answer all such questions relating to the application of the money and securities in question as the court or judge may make or direct.

(vi) The place where he is to be served with any petition, notice, or other proceeding, relating to the money or securities in question.

(2) Every order made on such application shall direct the applicant forthwith to give notice thereof, by prepaid letter through the post, to the several persons whose names and places of residence are stated in his affidavit as interested in, or entitled to, the moneys or securities paid into, or deposited in court (except in the case of infants, or persons of unsound mind,) and to the Official Guardian *ad litem* on behalf of all infants, and persons of unsound mind.

(3.) **Notice of Order.**—It shall be the duty of the Official Guardian *ad litem*, whenever practicable, forthwith to communicate to the parents, guardians, or committee, of any person on whose behalf he may be so notified, the contents of such order.

(4) The notice of an order made under the said Act may be in the following form, or to the like effect.

ONT. TRUSTEE RELIEF ACT.

IN THE HIGH COURT OF JUSTICE.

In the matter of (*specifying trust, etc., as in the affidavit.*)

Take notice that pursuant to the order of the court dated the
 day of I have paid into
 court to the credit of the above mentioned matter \$
or I have deposited in the court to the credit of the
 above mentioned matter the following securities (*specifying them*) in
 which moneys (*or securities*) you appear to be interested as (*stating*
shortly how e.g. as legatee under the will of A. B.)

Dated this day of

Signature of applicant, in person, or by his Solicitor.

(5) Notice of all applications respecting money or securities
 paid into, or deposited in, court under this Act shall be served on
 the trustee, and the persons directed to be notified of such payment
 or deposit unless such service be dispensed with by the court, or
 a judge. *New.*

R. S. O., 1897, CHAP. 337.

AN ACT RESPECTING EXECUTORS AND ADMINISTRATORS.

Executors,

Citation of, to prove will ss. 1, 2

Infant executor, administration with will annexed, during minority ss. 3, 4

Administrators,

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Representatives of Deceased Executors, or Administrators,

Liability of ss. 16, 17

Lands sold for Debts,

Conveyance of ss. 18, 19

Property subject to power, when to be assets s. 20

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

EXECUTORS.

1. Surrogate Judge may cite executor named in will to prove or renounce.—The Surrogate Judge having jurisdiction in the premises may cite before him any person named executor of any will to prove or refuse to prove such will, and to bring in inventories and to do every other thing necessary or expedient concerning the same. 21 Hen. VIII, c. 5, s. 6.

2. An executor not acting or not appearing to a citation, to be treated as if he had renounced.—Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator, and the administration of his effects, shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor. Imp. Act, 21 and 22 Vict., c. 95, s. 16.

3. Where an infant sole executor, administration to be granted to the guardian, etc.—Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Surrogate Judge shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him. Imp. Act, 38 Geo. III, c. 87, s. 6.

4. Who shall have the same power as where administration is granted "durante minore oetate" of the next of kin.—The person to whom such administration shall be granted shall have

the same powers vested in him as an administrator now hath by virtue of an administration granted to him *durante minore ætate* of the next of kin. Imp. Act, 38 Geo. III, c. 87, s. 7.

ADMINISTRATORS.

5. Rev. Stat. c. 59. To what persons administration shall be granted.—Subject to the provisions of *The Surrogate Courts Act*, where any person dies intestate, or the executor named in his will refuses to prove the same, administration of the property of the deceased may be committed by the Surrogate Court having jurisdiction, to the husband, or to the wife, or to the next of kin, or to the wife and next to kin, or to the next and most lawful friends of the deceased, as in the discretion of the said Judge shall seem best; and in case divers persons claim the administration as next of kin who are equal in degree of kindred to the deceased, or where only one desireth the administration as next of kin, where there are in fact divers persons of equal kindred as aforesaid, then in every such case the administration may be committed to such one or more of such next of kin as the said Judge may think fit. 31 Ed. III, St. 1, c. 11, and 21 Hen. VIII., c. 5, s. 2, and Common Law.

6. Administrators to be entitled to recover property of deceased and to be accountable therefor as executors.—Administrators appointed by the Surrogate Court to administer the estate of a deceased person shall be entitled to sue for, and recover, the debts and other property of the deceased, and shall be accountable for the due administration of the same in like manner as executors. 31 Ed. III, St. 1, c. 11.

7. Administrators not compellable to account (except by inventory) but at the instance of persons interested.—No administrator shall be cited to any court to render an account of the estate of his intestate (otherwise than by an inventory thereof) unless it be at the instance and prosecution of some person on behalf of a minor, or having a demand out of such estate as a creditor, or next of kin, nor be compellable to account before any Judge otherwise than as aforesaid. 1 Jac. II, c. 17, s. 6.

8. Fraudulent administrator shall be charged as executor of his own wrong.—Allowing him all just payments, etc.—**Rev. Stat., c. 129.**—Forasmuch as it is often put in practice to the defrauding of creditors that such persons as are to have the administration of the goods of others dying intestate committed unto them if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves, or others by their means, do take deeds of gift, and authorities by letters of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors for lack of knowledge of the place of habitation of the administrator cannot arrest him or sue him, and if they fortune to find him out, yet, for lack of ability in him to satisfy of his own goods the value of that he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have, or recover, their just and due debts; Therefore every person that hereafter shall obtain, receive, or have, any goods, or debts, of any person dying intestate, or a release, or other discharge, of any debt or duty, that belonged to the intestate, upon any fraud, or without such valuable consideration as shall amount to the value of the

same goods, and debts, or near thereabouts, except it be in or towards satisfaction of some just and principal debt of the value of the same goods or debts to him owing by the intestate at the time of his decease, shall be charged and chargeable as executor of his own wrong, and so far only as all such goods, and debts, coming to his hands, or whereof he is released, or discharged, by such administrator, will satisfy, deducting, nevertheless, to and for himself, allowance of all just due, and principal debt, upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors or administrators may and ought to have and pay by the laws and statutes of this Province. This provision is subject to section 34 of *The Trustee Act*, 43 Eliz., c. 8, s. 1.

INVENTORIES.

9. Inventory to be filed by person applying for probate, or administration.—(1) The person applying for a grant of probate, or administration, shall, before the same is granted, make or cause to be made a true and perfect inventory in duplicate of all the property which belonged to the deceased at the time of his death; such inventory shall be verified by the applicant, upon his oath, to be good and true; and one copy thereof shall be delivered by him into the keeping of the proper Surrogate Court having power to grant probate of the testament, or letters of administration to the estate of the deceased, and the other copy thereof shall remain with the person to whom the grant is made. 21 Hen. VIII, c. 5, s. 4.

(2.) **Further inventory of subsequently discovered property.**—In case after the grant of probate, or letters of administration, any property belonging to the deceased at the time of his death, and not included in such inventory, shall be discovered by the executor, or administrator, he shall, within six months thereafter, make and deliver to the Surrogate Court by which such grant was made an inventory of such newly discovered property duly verified by oath as aforesaid. *New.*

(3.) **Inventory in case of limited grant.**—In case the application, or grant, is limited to part only of the property of the deceased it shall be sufficient to set forth in such inventory the property intended to be affected by such application or grant. *New.*

(4.) **Rule 19 of Surrogate Court.**—*Rev. Stat., c. 59.*—The provisions of Rule 19 of the Surrogate Court Rules (1894) with regard to the exhibition of an inventory by an executor, or administrator, shall not be construed as rendering an executor, or administrator, who has complied with the foregoing provisions, liable to be called upon to furnish a further inventory, except in the cases provided for by section 73 of *The Surrogate Courts Act*. *New.*

POWERS AND DUTIES OF EXECUTORS, AND ADMINISTRATORS.

10. Executor to have action of account.—An executor shall have an action of account as the testator might have had if he had lived. 13 Ed. I (St. of Westminster, Sec.) c. 23.

11. Executor or administrator may sue for rent due deceased.—The executors or administrators of any lessor or landlord may sue for the arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done if living. 32 Hen. VIII., c. 37, s. 1.

(See R. S. O., c. 129, ss. 13, 14).

12. Rev. Stat. c. 127. Executors proving will to have power to sell.—Subject to the provisions of *The Devolution of Estates Act*, where a testator by his will doth devise or direct lands to be sold by his executors, such sale may be validly made by such one or more of the executors as shall take upon him, or them, the care and charge of the said will, and a conveyance by such executor or executors shall be as valid and effectual in law as if all of the executors named in the will had joined therein. 21 Hen. VIII, c. 4, s. 1.

13. Executors of executors to have rights and liabilities of first executors.—Executors of executors shall have the same actions for the debts and property of the first testator as he would have had if in life; and shall be answerable for such of the debts and property of the first testator as they shall recover as the first executors should do if they had recovered the same. (See 25 Ed. III, Stat. 5, c. 5.)

14. Executor, trustee of residue undisposed of for next of kin under Rev. Stat. c. 335, unless it appear by the will that he was intended to take beneficially.—When any person shall die having by will, or codicil, appointed any person to be executor, such executor shall be deemed to be a trustee for the person (if any) who would be entitled to the estate under *The Statute of Distribution*, in respect of any residue not expressly disposed of, unless it shall appear by the will, or codicil, that the person so appointed executor was intended to take such residue beneficially. Imp. Act, 11 Geo. IV, and 1 W. IV, c. 40, s. 1.

15. Not to effect rights of executors where there is not any person entitled to the residue under Rev. Stat. c. 335.—Nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled, in cases where there is not any person who would be entitled to the testator's estate under *The Statute of Distribution*, in case of an intestacy, in respect of any residue not expressly disposed of. Imp. Act, 11 Geo. IV, and 1 W. IV, c. 40, s. 2.

LIABILITY OF REPRESENTATIVES OF EXECUTORS AND ADMINISTRATORS.

16. Executors, etc., of executors in their own wrong wasting goods of the deceased, liable as their testator, etc.—The executors and administrators of any person who, as executor in his own wrong, or as administrator, shall waste or convert any goods, chattels, estate, or assets, of any person deceased, to his own use, shall be liable and chargeable in the same manner as their testator, or intestate, would have been if he had been living. 30 Car. 2, c. 7, s. 1.

17. Liability of executor or administrator of a deceased executor for devastavit.—Every executor, or administrator, of an executor, or administrator of right, who shall waste, or convert to his own use, goods, chattels, or estate, of his testator, or intestate, shall be liable and chargeable in the same manner as his testator, or intestate, should, or might have been, any law or usage to the contrary notwithstanding. 4 W. and M., c. 24, s. 12.

CONVEYANCE OF LANDS SOLD FOR DEBTS.

18. Infants to make conveyances under order of the Court of real estates directed to be sold for payment of debts.—

(1) Where any action shall be instituted in any court for the payment of any debts of any person deceased to which the estate may be subject or liable, and such court shall order the estates liable to such debts, or any of them, to be sold, or mortgaged, for satisfaction of such debts, and by reason of the infancy of any heir, or devisee, an immediate conveyance thereof cannot, be compelled, in every such case such court shall direct, and if necessary, compel, such infant to convey such estates so to be sold, or mortgaged, by all proper assurances in the law to the purchaser, or mortgagee thereof, and in such manner as the said court shall think proper and direct; and every such infant shall make such conveyance, or mortgage accordingly; and every such conveyance, or mortgage, shall be as valid and effectual to all intents and purposes as if such person being an infant was, at the time of executing the same, of the full age of twenty-one years. Imp. Act, 11 Geo. IV., and 1 W. IV., c. 47, s. 11, as amended by 2 and 3 Vict., c. 60, s. 1.

(2.) **Surplus to descend as land would have done.**—The surplus of money from such sale, or mortgage, shall descend in the same manner as the estates so sold, or mortgaged, would have done. Imp. Act, 2 and 3 Vict., c. 60, s. 2.

19. Persons having a life interest may, by order of the Court, convey the fee of estates ordered to be sold for payment of debts.—Where any lands, tenements, or hereditaments shall be devised in settlement by any person whose estate shall by law be liable to the payment of any of his debts, and by such devise shall be vested in any person for life, or other limited interest, with any remainder, limitation, or gift over, which may not be vested, or may be vested in some person from whom a conveyance or other assurance of the same cannot be obtained, or by way of executory devise, and an order shall be made for the sale thereof for the payment of such debts, or any of them, it shall be lawful for the court to direct the tenant for life, or other person having a limited interest, or the first executory devisee thereof, to convey, release, assign, surrender, or otherwise assure the fee simple, or other the whole interest or interests so to be sold, to the purchaser, or in such manner as the said court shall think proper; and every such conveyance, release, surrender, assignment, or other assurance, shall be as effectual as if the person who shall make and execute the same were seized, or possessed, of the fee simple, or other whole estate, so to be sold. Imp. Act, 11 Geo. IV., and 1 W. IV., c. 47, s. 12.

PROPERTY SUBJECT TO POWER, WHEN TO BE ASSETS.

20. Exercise of general power by will, effect of.—Property, real and personal, over which a deceased person has a general power of appointment which he may exercise for his own benefit without the assent of any other person, shall be assets for the payment of his debts, where the same is appointed by his will; and under an execution against the personal representatives of such deceased person, such assets may be seized and sold, after the deceased person's own property has been exhausted. (See 3 W. and M., c. 14); 2 Ed. VII., c. 1, s. 6.

AN ACT RESPECTING TRUSTEES AND EXECUTORS AND THE ADMINISTRATION OF ESTATES.

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short title.—This Act may be cited as “*The Trustee Act.*”

2. Interpretation. Rev. Stat. c. 128.—In the construction of this Act the words “Will,” “Real Estate,” and “Personal Estate.” shall have the meaning assigned to them respectively by section 9, of *The Wills Act of Ontario*. R. S. O., 1887, c. 110, s. 1.

RIGHTS AND LIABILITIES OF TRUSTEES.

3. Every trust instrument to be deemed to contain clause for the indemnity and reimbursement of the trustees. Imp. Act, 22-23 V., c. 35, s. 31.—Every deed, will or other document creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to

contain a clause in the words or to the effect following, that is to say:—"That the trustees or trustee, for the time being, of the said deed, will or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities, nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being, of the said deed, will or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument." R. S. O., 1887, c. 110, s. 2.

4. Appointment of new trustees. Imp. Act, 23-24 V., c. 145, s. 27.—(1) Where a trustee, either original or substituted and whether appointed by the High Court or otherwise, dies, or desires to be discharged from, or refuses, or becomes unfit or incapable, to act in the trusts or powers in him reposed, before the same have been fully discharged and performed, it shall be lawful for the person or persons nominated for that purpose by the deed, will or other instrument creating the trust (if any), or if there be no such person or no such person able and willing to act, then for the surviving or continuing trustees or trustee for the time being, or the acting executors or executor or administrators, or administrator of the last surviving and continuing trustee, or for the last retiring trustee, by writing, to appoint any other person or persons to be a trustee or trustees, in place of the trustee or trustees dying, or desiring to be discharged, or refusing, or becoming unfit, or incapable to act as aforesaid; and so often as any new trustee or trustees is or are so appointed as aforesaid, all the trust property (if any), which for the time being is vested in the surviving or continuing trustees or trustee, or in the heirs, executors or administrators of any trustees or trustee, shall, with all convenient speed be conveyed, assigned and transferred, so that the same may be legally and effectually vested in such new trustee or trustees, either solely or jointly with the surviving or continuing trustees, or a surviving or continuing trustee, as the case may require; and every new trustee to be appointed as aforesaid, as well before as after such conveyance, assignment or transfer as aforesaid, and also every trustee appointed by the High Court, either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act as if he had originally been nominated a trustee by the deed, will or other instrument creating the trust.

(2) The power of appointing new trustees hereinbefore contained, may be exercised in cases where a trustee, nominated in a will, has died in the lifetime of the testator. R. S. O., 1887, c. 110, s. 3.

5. Vesting of trust property in new or continuing trustees without conveyance. Imp. Act, 44 and 45 V., c. 41, s. 34.—

(1) Where an instrument by which a new trustee is appointed to perform any trust contains a declaration by the appointer to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any

debt or other thing in action so subject, shall vest in the persons who by virtue of such instrument become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest or right.

(2) Where an instrument by which a retiring trustee is discharged under this Act contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person, if any, empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3) This section does not extend to any share, stock, annuity, or property only transferable in books kept by a company or other body, or in manner prescribed by or under an Act of Parliament or of this Legislature.

(4) For purposes of registration of an instrument in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Act.

(5) This section applies only to instruments executed after the 1st day of July, 1886. R. S. O., 1887, c. 110, s. 4.

6. Trustees buying or selling. Rev. Stat., c. 134.—Trustees who are vendors or purchasers may sell or buy without excluding the application of section 2 of *The Vendors and Purchasers Act*. R. S. O., 1887, c. 110, s. 5.

7. Fee simple estates of bare trustees to vest in their personal representatives.—Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditaments shall vest in the legal personal representative from time to time, of such trustee. R. S. O. 1887, c. 110, s. 6.

8. Conveyances by married woman as bare trustee.—Where any freehold hereditament is vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a *feme sole*, and without her husband joining in the conveyance. R. S. O., 1887, c. 110, s. 7.

9. Receipts of trustees to be effectual discharges.—The *bona fide* payment of any money to and the receipt thereof by any person to whom the same is payable upon any express or implied trust, or for any limited purpose, and such payment to and receipt by the survivors or survivor of two or more mortgagees or holders or the executors or administrators of such survivor or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust or security. R. S. O., 1887, c. 110, s. 8. (See also Cap. 121, sec. 14.)

RIGHTS AND LIABILITIES OF EXECUTORS, ETC.

10. Actions by executors and administrators for torts.—The executors or administrators of any deceased person may maintain an action for all torts or injuries to the person or to the real or personal estate of the deceased, except in cases of libel and slander, in the same manner, and with the same rights and remedies as the

deceased would, if living, have been entitled to do; and the damages when recovered shall form part of the personal estate of the deceased; but such action shall be brought within one year after his decease. R. S. O., 1887, c. 110, s. 9.

11. Actions against executors and administrators for torts.—In case any deceased person committed a wrong to another in respect of his person, or of his real or personal property, the person so wronged may maintain an action against the executors or administrators of the person who committed the wrong. The action shall be brought at latest within one year after the decease. This section shall not apply to libel or slander. R. S. O., 1887, c. 110, s. 10.

12. Damages in actions under two preceding sections.—In estimating the damages in any action under either of the next preceding two sections, the benefit, gain, profit or advantage, which, in consequence of or resulting from the wrong committed, may have accrued to the estate of the person who committed the wrong, shall be taken into consideration, and shall form part, or may constitute the whole, of the damages to be recovered, and whether or not any property, or the proceeds or value of property, belonging to the person bringing the action or to his estate, has or have been appropriated by or added to the estate or moneys of the person who committed the wrong. R. S. O., 1887, c. 110, s. 11.

13. Executors or administrators of a lessor may distrain for arrears.—The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrears of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done if living. R. S. O., 1887, c. 110, s. 12.

14. Such arrears of rent may be distrained for within six months after determination of the lease.—Such arrears may be distrained for at any time within six months after the determination of the term or lease, and during the continuance of the possession of the tenant from whom the arrears became due; and the powers and provisions contained in the several statutes relating to distresses for rent shall be applicable to the distresses so made as aforesaid. R. S. O., 1887, c. 110, s. 13.

15. Representatives of deceased joint contractors liable although the other joint contractors be living.—In case any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners, may proceed by action against the representatives of the deceased contractor, obligor or partner, in the same manner as if the contract, obligation or promise, had been joint and several, and this notwithstanding there may be another person liable under such contract, obligation or promise still living, and an action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies, shall not be liable to a greater extent than they would have been if this section had not been passed. R. S. O., 1887, c. 110, s. 15.

[As to discharges of mortgages by executors, etc., see *The Act Respecting Mortgages of Real Estate*, Cap. 121, secs. 11, 12 and 13.]

16. Devisee in trust may raise money by sale or mortgage to satisfy charges, notwithstanding want of express power in the will. Imp. Act, 22-23 V., c. 35, s. 14.—Where by any will coming into operation after the eighteenth day of September 1865, or after the passing of this Act, a testator charges his real

estate, or any specific portion thereof, with the payment of his debts or with the payment of any legacy or other specific sum of money, and devises the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and does not make any express provision for the raising of such debt, legacy or sum of money out of such estate, the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, may raise such debt, legacy or money as aforesaid by a sale and absolute disposition, by public auction or private contract, of the said real estate or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same think proper. R. S. O., 1887, c. 110, s. 18.

17. Power given by last section extended to survivors, devisees, etc. Imp. Act, 22-23 V., c. 35, s. 15.—The powers conferred by the next preceding section shall extend to all and every the person or persons in whom the estate devised is for the time being vested by survivorship, descent or devise, or to any person or persons appointed under any power in the will or by the High Court to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. R. S. O., 1887, c. 110, s. 19.

18. Executor to have power of raising money where there is no sufficient devise. Imp. Act, 22-23 V., c. 35, s. 16.—If a testator who creates such a charge as is described in section 16, does not devise the real estate charged as aforesaid in such terms as that his whole estate and interest therein become vested in any trustee or trustees, the executor or executors for the time being named in the will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore conferred upon the devisee or devisees in trust of the said real estate; and such powers shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship is for the time being vested; but any sale or mortgage under this Act shall operate only on the estate and interest of the testator. R. S. O., 1887, c. 110, s. 20.

19. Purchasers, etc., not bound to inquire as to exercise of powers. Imp. Act, 22-23 V., c. 35, s. 17.—Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the preceding three sections of this Act, or any of them, have been duly and correctly exercised by the person or persons acting in virtue thereof. R. S. O., 1887, c. 110, s. 21.

20. Sections 16 to 19 not to affect certain sales not to extend to devises in fee or in tail. Imp. Act, 22-23 V., c. 35, s. 18.—The provisions contained in the preceding four sections shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the 18th day of September, 1865; but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if the said sections had not been enacted; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do. R. S. O., 1887, c. 110, s. 22.

21. Direction to sell, etc., may be exercised by executor when no other person is appointed to exercise same.—Where there is in any will or codicil of any deceased person, whether such

will has been made, or such person has died before or after the 1st day of January, 1874, any direction whether express or implied, to sell, dispose of, appoint, mortgage, incumber or lease any real estate, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute and carry the same into effect, the executor or executors (if any) named in such will or codicil shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incumber or lease such real estate, and any estate or interest therein, in as full, large, and ample a manner, and with the same legal effect, as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect. R. S. O., 1887, c. 110, s. 23.

22. Administrator with will annexed may exercise powers of sale, given to the executor. Rev. Stat. c. 59.—Where there is in any will or codicil thereto of any deceased person (whether such will has been made, or such person has died before or after the first day of January, 1874), any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incumber, or lease any real estate, or any estate or interest therein, whether such power is express, or arises by implication, and where, from any cause, letters of administration with such will annexed have been by a court of competent jurisdiction in Ontario committed to any person, and such person has given the additional security required by section 58 of *The Surrogate Courts Act*, such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incumber, or lease such real estate, and any estate or interest therein in as full, large, and ample a manner, and with the same legal effect for all purposes, as the said executor or executors might have done. R. S. O., 1887, c. 110, s. 24.

23. Or when no one named in the will to execute powers of sale, etc.—Where there is in any will or codicil thereto of any deceased person (whether such will has been made or such person has died before or after the first day of January, 1874), any, power to sell, dispose of, appoint, mortgage, incumber, or lease any real estate, or any estate or interest therein, whether such power is express, or arises by implication, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute such power, and letters of administration with such will annexed, have been by a court of competent jurisdiction in Ontario, committed to any person, and such person has given the additional security before mentioned such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incumber or lease such real estate, and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect, as if such last named person had been appointed by the testator to execute such power. R. S. O., 1887, c. 110, s. 25.

24. Executors, etc., may convey in pursuance of a contract for sale made by deceased.—Where any person has entered into a contract in writing for the sale and conveyance of real estate or of any estate or interest therein, and such person has died intestate, or without providing by will for the conveyance of such real estate, or estate or interest therein, to the person entitled or to become entitled to such conveyance under such contract, then, if the deceased would be liable to execute a conveyance, were he alive, the executor, administrator, or administrator with the will annexed (as the case may be), of such deceased person, shall make and give to the person entitled to the same a good and sufficient conveyance or conveyances of such estates, and of such nature as

the said deceased, if living, would be liable to give, but without covenants, except as against the acts of the grantor; and such conveyances shall be as valid and effectual as if the deceased were alive at the time of the making thereof, and had executed the same, but shall not have any further validity. R. S. O., 1887, c. 110, s. 26.

25. Duties and liabilities of an executor and administrator acting under the powers in this Act.—Every executor, administrator, and administrator with the will annexed, shall, as respects the additional powers vested in him by this Act, and any money or assets by him received in consequence of the exercise of such powers, be subject to all the liabilities, and compellable to discharge all the duties of whatsoever kind, which, as respects the acts to be done by him under such powers, would have been imposed upon an executor or other person appointed by the testator to execute the same, or in case of there being no such executor or person, would have been imposed by law upon any person appointed by law, or by any court or Judge of competent jurisdiction to execute such powers. R. S. O., 1887, c. 110, s. 27.

26. Powers given by this Act to two or more to survive.—Where there are several executors, administrators, or administrators with the will annexed, and one or more of them die, the powers hereby created shall vest in the survivor or survivors. R. S. O., 1887, c. 110, s. 28.

(As to investment of moneys received for infants under Life Assurance Policies. See Cap. 203, section 155, sub-s.5.)

27. Interpretation as to next five sections.—"Trustee."

(1) For the purposes of the next five sections of this Act the expression "trustee" shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee.

(2) **Extend to joint trustees.**—(2) The provisions of the said five sections relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

(3) **"Instrument."**—The expression "instrument" shall include an Act of the Legislature of Ontario. 54 V., c. 19, s. 2 (1, 2, 4).

(4) **Apply to all trusts.—Proviso.**—The said five sections shall apply as well to trusts created by an instrument executed before as to trusts created on or after the 4th day of May, 1891, and the powers by the said sections conferred are in addition to the powers conferred by the instrument, if any, creating the trust; Provided always that save as in the said sections expressly provided, nothing therein contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. 54 V., c. 19, ss. 3, 14.

28. Appointment of agents by trustees for certain purposes. Imp. Act, 51-52 V., c. 59, s. 2.—Proviso.—(1) It shall be lawful for a trustee to appoint a solicitor to be his agent to receive and give a discharge for any money or any valuable consideration of property receivable by such trustee under the trust; and no trustee shall be chargeable with breach of trust by reason only of his having made or concurred in making any such appointment; Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted in case of permitting such money, valuable consideration, or property to remain in the hands or under the control of the

solicitor for a period longer than is reasonably necessary to enable the solicitor to pay or transfer the same to the trustee.

(2) It shall be lawful for a trustee to appoint a banker or solicitor to be his agent to receive and give a discharge for any money payable to such trustee under or by virtue of a policy of assurance or otherwise; and no trustee shall be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment; Provided that nothing herein contained shall exempt a trustee from any liability which he would have incurred if this section had not been enacted, in case he permits such money to remain in the hands or under the control of the banker or solicitor for a period longer than is reasonably necessary to enable him to pay the same to the trustee.

(3) This section shall apply only where the money or valuable consideration or property was or is received on or after the 4th day of May, 1891. 54 V., c. 19, s. 7.

28a. When trustee may file accounts.—A trustee appointed by any deed, will or other instrument in writing or by an order of any court desiring to pass the accounts of his dealings with the estate to which he is trustee may file his accounts in the office of the Surrogate Court of the county in which he or one of the trustees is resident or in the Surrogate Court of the county in which the trust estate or part of the same is situate, and thereupon the proceedings and practice upon the passing of the said accounts shall be the same and have the like effect as the passing of executors' or administrators' accounts in the Surrogate Court; Provided, however, that in the case of trustees, under any will the accounts which may be so filed and passed shall be filed and passed in the office of the Surrogate Court by which probate of the will was granted. (Added by 63 Vict., c. 17, s. 18, as amended by 3 Edw. VII, c. 7, s. 26.)

29. Sales by trustees not impeachable on certain grounds. **Imp. Act, 51-52 V., c. 59, s. 3.**—(1) No sale made by a trustee shall be impeached by any *cestui que trust* upon the ground that any of the conditions subject to which the sale was made, were unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall after the execution of the conveyance be impeached as against the purchaser, upon the ground that any of the conditions subject to which the sale was made were unnecessarily depreciatory, unless it appears that such purchaser was acting in collusion with the trustee at the time when the contract for the sale was made.

(3) No purchaser, upon any sale made by a trustee, shall be at liberty to make any objection against the title upon the ground aforesaid.

(4) This section shall apply only to sales made on or after the 4th day of May, 1891. 54 V., c. 19, s. 8.

30. Trustees committing breach of trust at instigation of beneficiary. **Imp. Act, 51-52 V., c. 59, s. 6.**—(1) Where a trustee has committed a breach of trust at the instigation or request or with the consent in writing of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2) This section shall apply to breaches of trust committed as well before as after the 4th day of May, 1891, except where an action or other proceeding was then pending with reference thereto. 54 V., c. 19, s. 11.

31. Powers of trustees to insure trust property. Imp. Act, 51-52 V., c. 59, s. 7.—(1) It shall be lawful for, but not obligatory upon, a trustee to insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot) not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof or out of the income of any other property, subject to the same trusts, without obtaining the consent of any person entitled wholly or partly to such income.

(2) This section shall not apply to any building or property which a trustee is bound forthwith to convey absolutely to any *cestui que trust* upon being requested to do so. 54 V., c. 19, s. 12.

LIMITATION OF ACTIONS.

32. Application of Statutes of limitations to certain actions against trustees. Imp. Act, 51-52 V., c. 59, s. 8.—In any action or other proceeding against a trustee or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or so to recover trust property, or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

(a) All rights and privileges conferred by any statute of limitations shall be enjoyed in the like manner and to the like extent as they would have been enjoyed in such action or other proceeding if the trustee or person claiming through him had not been a trustee or person claiming through a trustee.

(b) If the action or other proceeding is brought to recover money or other property, and is one to which no existing statute of limitations applies, the trustee or person claiming through him shall be entitled to the benefit of, and be at liberty to plead, the lapse of time as a bar to such action or other proceeding in the like manner and to the like extent as if the claim had been against him in an action of debt for money had and received; but so nevertheless that the statute shall run against a married woman entitled in possession for her separate use, whether with or without restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought the action or other proceeding, and this section had been pleaded.

(3) This section shall apply only to actions or other proceedings commenced after the first day of January, 1892, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing statute of limitations. 54 V., c. 19, s. 13.

ADMINISTRATION OF ESTATES.

33. Powers of executors as to settling debts owing from or to their estates.—(1) It shall be lawful for any executors to pay any debts or claims upon any evidence that they may think sufficient, and to accept any composition or any security, real or personal, for any debts due to the deceased, and to allow any time for payment of any such debts as they may think fit, and also to compromise, compound, or submit to arbitration all debts, accounts, claims and things whatsoever relating to the estate of the deceased, and, for any of the purposes aforesaid, to enter into, give and execute such agreements, instruments of composition, releases and other things, as they may think expedient, without being responsible for any loss occasioned thereby.

(2) None of the powers in this section conferred shall take effect, or be exercisable, by virtue of this Act, by any trustees or executors, if it is expressly declared in the deed, will or other instrument creating such trustees or executors that such trustees or executors shall not have such power.

(3) This section shall apply and extend to both present and future trustees and executors. R. S. O., 1887, c. 110, s. 31.

62 Vict. (2), Chap. 15, s. 2. Sec. 33 shall extend to and include administrations upon intestacy, and with will annexed and whether already appointed or hereafter to be appointed.

34. In case of deficiency of assets, debts to rank "pari passu."—Not to affect liens.—On the administration of the estate of a deceased person, in case of a deficiency of assets, debts due to the Crown and to the executor or administrator of the deceased person, and debts to others, including therein respectively debts by judgment or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as by statute are payable in like order of administration as simple contract debts—shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another; but nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate. R. S. O., 1887, c. 110, s. 32.

35. If claim is rejected and notice given an action must be brought within a certain period.—Proviso.—In case the executor or administrator gives notice in writing referring to this section and of his intention to avail himself thereof to any creditor or other person of whose claims against the estate he has notice, or to the attorney or agent of such creditor or other person, that he the executor or administrator rejects or disputes the claim, it shall be the duty of the claimant to commence his action in respect of the claim within six months after the notice is given, in case the debt or some part thereof is due at the time of the notice, or within six months from the time the debt or some part thereof falls due if no part thereof is due at the time of the notice, and in default the claim shall be forever barred; Provided always that in case the claimant shall be nonsuited, at the trial the claimant, or his executors or administrators, may commence a new action within a further period of one month from the time of the nonsuit. R. S. O., 1887, c. 110, s. 33.

36. As to liability of executor or administrator in respect of covenants, etc., in leases. Imp. Act, 22-23 V., c. 35, s. 27.—Where an executor or administrator, liable as such to the

rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, has satisfied all such liabilities under the said lease or agreement for a lease, as have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for the lease, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and among the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased, to meet any future liability under the said lease, or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease, or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. R. S. O., 1887, c. 110, s. 34.

37. As to liability of executor in respect of rents, etc., in conveyances on rent charge, etc. Imp. Act, 22-23 V., c. 35, s. 28.—In like manner where an executor or administrator, liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge (whether any such rent be by limitation of use, grant or reservation), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, has satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and has conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased, to meet any future liability under the said conveyance, or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed. R. S. O., 1887, c. 110, s. 35.

38. Distribution of assets under trust deeds for benefit of creditors, or of the assets of a testator or intestate after notice given by trustee, assignee, executor or administrator.—

Where a trustee or assignee acting under the trusts of a deed or assignment for the benefit of creditors generally, or a particular class or classes of creditors, where the creditors are not designated by name therein, or an executor or an administrator has given such or the like notices as in the opinion of the court in which such trustee, assignee, executor, or administrator is sought to be charged, would have been given by the High Court in an action for the execution of the trusts of such deed or assignment, or an administration suit (as the case may be), for creditors and others, to send into such trustee, assignee, executor or administrator, their claims against the person for the benefit of the creditors of whom such deed or assignment is made, or the estate of the testator or intestate (as the case may be), the trustee, assignee, executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the proceeds of the trust estate, or the assets of the testator or intestate (as the case may be), or any part thereof amongst the parties entitled thereto, having regard to the claims of which the trustee, assignee, executor or administrator has then notice, and shall not be liable for the proceeds of the trust estate, or assets (as the case may be), or any part thereof, so distributed to any person of whose claim the trustee, assignee, executor or administrator had not notice at the time of the distribution thereof or a part thereof (as the case may be); but nothing in this Act contained shall prejudice the right of any creditor or claimant to follow the proceeds of the trust estate or assets (as the case may be), or any part thereof, into the hands of the person or persons who may have received the same respectively. R. S. O., 1887, c. 110, s. 36.

SUMMARY APPLICATION TO COURT FOR ADVICE.

39. Trustee, etc., may apply for advice in management, of trust property. Imp. Act, 22-23 V., c. 35, s. 30.—(1) Any trustee, guardian, executor or administrator, shall be at liberty, without the institution of an action, to apply in court or in chambers in the manner prescribed by Rules of Court, for the opinion, advice or direction of a Judge of the High Court on any question respecting the management or administration of the trust property or the assets of a testator or intestate.

(2) The trustee, guardian, executor or administrator, acting upon the opinion, advice or direction given by the Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, guardian, executor, or administrator, in the subject matter of the said application; but this provision shall not extend to indemnify a trustee, guardian, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid, if the trustee, guardian, executor or administrator has been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction. R. S. O., 1887, c. 110, s. 37. (As amended by 2 Edw. VII, c. 12, s. 18.)

(As to costs see Cap. 51, sec. 119.)

ALLOWANCE TO TRUSTEES AND EXECUTORS.

40. Allowance to trustees.—Any trustee under a deed, settlement or will, any executor or administrator, any guardian appointed by any court, and any testamentary guardian, or any other trustee, howsoever the trust is created, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the trust estate, as may be allowed by the High Court or Judge or Surrogate Court Judge, or by any Master or Referee thereof, to whom the matter may be referred. R. S. O., 1887, c. 110, s. 38. (As amended by 63 Vict., c. 17, s. 18.)

41. Allowance to be made though the estate not before the Court.—A Judge of the High Court may, on application to him for the purpose, settle the amount of such compensation, although the trust estate is not before the court in any action. R. S. O., 1887, c. 110, s. 39.

42. Act to apply to existing as well as future trusts.—Compensation may be allowed in the case of any trust heretofore created, as well as in any to be hereafter created. R. S. O., 1887, c. 110, s. 40.

43. Surrogate Judge may order an allowance to be made to executor or administrator out of the estate for his trouble. The Judge of any Surrogate Court may allow to the executor or trustee or administrator acting under a will or letters of administration, a fair and reasonable allowance for his care, pains and trouble, and his time expended in or about the executorship, trusteeship or administration of the estate and effects vested in him under the will or letters of administration, and in administering, disposing and settling the same, and generally in arranging and settling the affairs of the estate, and may make an order or orders from time to time therefor and the same shall be allowed to an executor, trustee or administrator in passing his accounts. R. S. O., 1887, c. 110, s. 41.

(2) Where a barrister or solicitor is a trustee or an executor or an administrator and has rendered necessary professional services to the estate, regard may be had in making the allowance to such circumstance, and such allowance shall be increased by such amount as the court, judge, master or referee may consider to be fair and reasonable in respect of such necessary professional services; provided that nothing in this subsection shall affect pending litigation. (Added by 3 Edw. VII, c. 7, s. 27.)

44. Where allowance fixed by the instrument.—Nothing in the next preceding four sections shall apply to any case in which the allowance is fixed by the instrument creating the trust. R. S. O., 1887, c. 110, s. 42.

62 VICT. (2) CHAP. 15.

AN ACT TO AMEND THE LAW RESPECTING THE LIABILITY OF TRUSTEES.

Assented to 1st April, 1899.

Her Majesty by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Relief of trustees committing technical breach of trust.—If in any proceeding affecting trustees or trust property it appears to the court that a trustee, whether appointed by the court, or by

an instrument in writing, or otherwise, or that any person who in law may be held to be fiduciarily responsible as a trustee, is or may be personally liable for any breach of trust whether the transaction alleged or found to be a breach of trust occurred before or after the passing of this Act, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve the trustee either wholly or partly from personal liability for the same. Imp. Act, 59-60 Vict., c. 35, s. 3.

2. Rev. Stat., c. 129, s. 33 application of.—Section 33 of “The Trustee Act” shall extend to and include administrators upon intestacy, and with will annexed and whether already appointed or hereafter to be appointed.

3. Payment into court by person holding trust moneys for trustee.—(1) Any persons with whom trust moneys have been deposited or to whose hands trust moneys have come, may in case the trustee has been absent from the Province for a period of a year and is not likely to return at an early date or in the event of the trustee's death, pay the same into the High Court under and in conformity with the provisions of law for the relief of trustees.

(2) This section shall extend to a case where there are more trustees than one and the trustee or trustees in the Province cannot give an acquittance of the money.

R. S. O., 1897, CHAPTER 130.

AN ACT RESPECTING INVESTMENTS BY TRUSTEES.

Her Majesty, by and with advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short title.—This Act may be cited as “The Trustee Investment Act.”

2. Trustees or executors may invest trust moneys in certain securities. Imp. Act, 23-24 V., c. 145, s. 25.—(1) Trustees or executors having trust money in their hands, which it is in their duty, or which it is in their discretion, to invest at interest, shall be at liberty at their discretion, to invest the same in any stock, debentures or securities of the Government of the Dominion of Canada, or of this Province, or of any of the other Provinces of Canada, or in debentures or securities, the payment of which is guaranteed by the Government of the Dominion of Canada, or of this Province, or of any of the other Provinces of Canada, or in the debentures of any municipality in this Province; or in securities which are a first charge on land held in fee simple in the Provinces of Ontario and Manitoba provided that such investments are in other respects reasonable and proper, and such trustees or executors shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same in any such stock, debentures or securities aforesaid, and also, from time to time, at their discretion, to vary any such investments as aforesaid, for others of the same nature; and any such moneys already invested in any such stock, debentures or securities as aforesaid, shall be held and taken to have been lawfully and properly invested. [As amended by 7 Edw. VII., c. 23, s. 2.)

(2.) **This section to apply to all trustees, etc.**—This section shall apply and extend to both present and future trustees and executors. R. S. O., 1887, c. 110, s. 29 (1 and 3.)

3. Interpretation.—“Trustee.”—(1) For the purposes of the following sections of this Act the expression “trustee” shall be deemed to include an executor or administrator and a trustee whose trust arises by construction or implication of law as well as an express trustee.

(2) The provisions of this Act relating to a trustee shall apply as well to several joint trustees as to a sole trustee.

(3) The expression “stock” shall include fully paid up shares.

(4) The expression “instrument” shall include an Act of the Legislature of Ontario. 54 V., c. 19, s. 2.

4. Additional powers given.—**Proviso.**—The powers hereby conferred are in addition to the powers conferred by the instrument, if any, creating the trust; Provided that nothing herein contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. R. S. O., 1887, c. 110, s. 29 (2); 54 V., c. 19, s. 3.

5. Investment of trust funds.—(1) It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) creating the trust, to invest any trust funds in his hands in terminable debentures or debenture stock of the hereinafter mentioned societies and companies, provided that such investment is in other respects reasonable and proper, and that the debentures are registered, and are transferable only on the books of the society or

company in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid:—

(a) Of any incorporated society or company which has been, or shall hereafter be authorized by any lawful authority to lend money upon mortgages on real estate, or for that purpose and other purposes, such society or company having a capitalized, fixed, paid up and permanent stock not liable to be withdrawn therefrom amounting to at least \$400,000, and having a reserve fund amounting to not less than 25 per cent. of its paid-up capital, and its stock having a market value of not less than 7 per cent. premium;

(b) Or of any society or company heretofore incorporated under chapter 164 of the Revised Statutes of Ontario, 1877, or any Act incorporated therewith, or under chapter 169 of the Revised Statutes of Ontario, 1887, having a capitalized, fixed, paid up, and permanent stock not liable to be withdrawn therefrom amounting to at least \$200,000, and having a reserve fund amounting to not less than 15 per cent. of its paid-up capital and its stock having a market value of not less than 7 per cent. premium; provided that nothing in this clause (b) shall in any way affect any investment made under statutory authority before the passing of this Act.

(2) The trustees may from time to time vary any such investment. 54 V., c. 19, s. 4 (a-c). (As amended by 62 Vict. (2), c. 11, s. 32, 1 Edw. VII, c. 14, and 3 Edw. VII, c. 7, s. 25).

6. Companies in which funds invested to be approved by Lieutenant-Governor.—No investments shall be made under authority of this Act in the debentures of any society or company of the class first hereinbefore mentioned which has not obtained an order of the Lieutenant-Governor in Council approving of investments in the debentures thereof; and such approval is not to be granted to any society or company which does not appear to have kept strictly within its legal powers in relation to borrowing and investment. 54 V., c. 19, s. 5.

7. Revocation of Order in Council approving of investments.—The Lieutenant-Governor in Council if he deems it expedient may at any time revoke any Order in Council previously made approving of investments in the debentures or debenture stock of any society or company. Such revocation shall not affect the propriety of investments made before such revocation. 54 V., c. 19, s. 6.

8. When trustee not chargeable for lending on insufficient security. Imp. Act, 51-52 V., c. 59, s. 4.—(1) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able, practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed one-half of the value of the property, as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report. This section shall apply to a loan upon any property on which the trustee can lawfully lend.

(2) This section shall apply to transfers of existing securities as well as to new securities and to investments made as well before as on and after the 4th day of May, 1891, unless some action or other proceeding was pending with reference thereto at the said date. 54 V., c. 19, s. 9.

9. Trustee lending more than authorized amount. Imp. Act, 51-52 V., c. 59, s. 5.—(1) Where a trustee has improperly advanced trust money on a mortgage security which would at the time of the investment have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustees shall only be liable to make good the sum advanced in excess thereof with interest.

(2) This section shall apply to investments made as well before as on and after the 4th day of May, 1891, unless some action or other proceeding was pending with reference thereto at the said date. 54 V., c. 19, s. 10.

63. Vict., chap. 18, s. 2.—No executor, administrator or trustee shall be liable for breach of trust by reason only of his continuing to hold an investment which has ceased to be an investment authorized by the instrument of trust or by the general law; and this provision shall apply to cases arising either before or after the passing of this Act.

R. S. O., 1897, CHAP. 131.

AN ACT TO PROTECT PERSONS ACTING AS EXECUTORS OR ADMINISTRATORS.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Protection of persons acting as executors and administrators of persons supposed to be deceased.—Where any one has been or is hereafter appointed, by a court having jurisdiction in that behalf, administrator of the estate of any person who on account of absence for seven years or for any other reason has been presumed to be dead, or where probate of a will made by any such person has been or shall be granted by such court, all acts done under the authority of such appointment or probate, shall, death was erroneous, be as valid and effectual as such acts would have been had such person been dead; but the person erroneously presumed to be dead shall, subject to the provisions of sections 3 and 4, have the right to recover from the person acting as executor or administrator any part of the estate remaining in his hands undistributed, and no more; and shall, subject to the provisions of the statutes of limitations, be entitled to recover from any one who received any portion of his estate as one of his next of kin, or as a devisee, legatee or heir, or as the husband or wife of such person, the portion so received, or the value thereof. 53 V., c. 29, s. 1.

2. Protection of personal representatives acting upon supposed intestacy of deceased.—Where a will is admitted to probate, or a grant of administration is made with will annexed, or on account of supposed intestacy, by a court having jurisdiction in that behalf, all acts done under the authority of such will or grant of administration shall, notwithstanding it may afterwards appear that the deceased had left a will, or left a will which super-

seded that of which probate was granted or which was annexed to the said letters, or notwithstanding that it appears that the will admitted to probate or administration was not duly executed, or was for any reason invalid, be as valid and effectual as such acts would have been if such will had been the last will of the deceased, and had been duly executed and had been valid, or in case of administration as on intestacy as valid as such acts would have been if the deceased had died intestate; but upon the revocation of the grant of probate or administration, the new personal representative of the deceased shall, subject to the provisions of sections 3 and 4, have the right to recover from the person acting as executor or administrator as aforesaid, any part of the estate remaining in his hands undistributed, and no more; and shall, subject to the provisions of the statutes of limitations, be entitled to recover from any one who erroneously received any portion of the estate of the deceased as one of his next of kin, or as a devisee, legatee, or heir, or as the husband or wife of the deceased the portion so received or the value thereof. 53 V., c. 29, s. 2.

3. Costs of executors and administrators.—The said executor or administrator shall have the right to retain out of any amount remaining in his hands undistributed his proper costs and expenses in the administration of the estate. 53 V., c. 29, s. 3.

4. Persons acting fraudulently.—Nothing herein contained shall protect any person acting as administrator or executor where such person has been privy to any fraud by means of which the grant of administration or probate was obtained, or in cases arising under section 1 in respect of anything done after he becomes aware that the person who has presumed to be dead is alive, or in cases arising under section 2, that the will was not duly executed, or for some other reason was invalid, unless the thing so done was in pursuance of a contract for valuable consideration made before the said executor or administrator was aware to the effect aforesaid. 53 V., c. 29, s. 4.

NEW BRUNSWICK.

C. S. N. B., 1903, CHAP. 162.

RESPECTING TRUSTEES.

SHORT TITLE.

1. Short title.—This Chapter may be cited as “The Trustee Act.”

PART I.

2. Interpretation.—In this Chapter, unless the context otherwise requires—

(1.) **“Contingent right.”**—The words “contingent right” as applied to lands include a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of such interest or possibility be or be not ascertained; also a right of entry whether immediate or future, and whether vested or contingent. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(2.) **“Convey.”**—**“Conveyance.”**—The words “convey” and “conveyance” applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seized or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women to bar dower or convey their interest in real property under the Statutes and law of this Province. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(3.) **“Devisee.”**—The word “devisee” includes the heir of a devisee and the devisee of an heir, and any person who may claim right by devolution of title of a similar description. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(4.) **“Instrument.”**—The expression “instrument” includes Act of the Legislature of New Brunswick, and any Statute in force in this Province. (See Imp. Act, 56 and 57 V., c. 53, s. 50; 2 Edw. VII, c. 4, s. 3 (4).)

(5.) **“Lands.”**—The expression “lands” shall extend to and include messuages, tenements and hereditaments, corporeal and incorporeal, of every tenure or description, whatever may be the estate or interest therein. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(6.) **“Lunatic.”**—The word “lunatic” shall mean any person who shall have been found to be a lunatic upon a commission of inquiry in the nature of a writ *de lunatico inquirendo*, and the ex-

pression "person of unsound mind" shall mean any person not an infant who not having been found to be a lunatic shall be incapable from infirmity of mind to manage his own affairs. (See Imp. Act, 13 and 14 V., c. 60, s. 2.)

(7.) **"Mortgage."**—**"Mortgagee."**—The expressions "mortgage" and "mortgagee" include and relate to every estate and interest regarded in Equity as merely a security for money. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(8.) **"Pay."**—**"Payment."**—The expressions "pay" and "payment" as applied in relation to stocks and securities, and in connection with the expression "into court" include the deposit or transfer of the same in or into court. (See Imp. Acts, 56 and 57 V., c. 53, s. 50.)

(9.) **"Possessed."**—The expression "possessed" applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession or in expectancy, in any land. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(10.) **"Property."**—The expression "property" includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and anything in action, and any other right or interest, whether in possession or not. (See Imp. Acts, 56 and 57 V., c. 53, s. 50.)

(11.) **"Rights."**—The expression "rights" includes estates and interests. (See Imp. Act, 56 and 57 V., c. 53, s. 50.)

(12.) **"Securities."**—The expression "securities" includes stocks, funds and shares. (See Imp. Act, 56 and 57 V., c. 53, s. 50.)

(13.) **"Stock."**—The word "stock" includes fully paid-up shares; and, so far as relates to vesting orders made by the court under this Chapter, includes any fund, annuity, or security transferable in books kept by any incorporated bank, company or society, or by instrument of transfer, either alone or accompanied by other formalities, and any share or interest therein. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(14.) **"Transfer."**—The expression "transfer" in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

(15.) **"Trust."**—**"Trustee."**—The word "trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception the expressions "trust" and "trustee" include, implied and constructive trusts, and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person. (See Imp. Acts, 13 and 14 V., c. 60, s. 2; 56 and 57 V., c. 53, s. 50.)

PART II.

INVESTMENTS.

3. Authorized investments.—Re-investments.—(1) Trustees or executors having trust money in their hands, which it is their duty or which it is in their discretion, to invest at interest, shall be at liberty, at their discretion, to deposit the same in any bank duly chartered to do banking business in Canada, and having an agency in the Province, or to invest the same in any stock, bonds, debentures, or securities of the Government of the Dominion of Canada or of this Province, or of any municipality or city or school

district of this Province, or in securities which are a first charge on land held in fee simple, provided that such investments are in other respects reasonable and proper, and such trustees or executors shall also be at liberty, at their discretion, to call in any trust funds invested in any other securities than as aforesaid, and to invest the same in any such stock, bonds, debentures or securities aforesaid, and also from time to time, at their discretion, to vary any such investment as aforesaid, for others of the same nature.

(2.) **Application of section.**—This section shall apply and extend to both present and future trustees and executors. 2 Edw. VII, c. 4, s. 2.

4. Powers of investment to be additional to those in trust instrument.—The powers conferred by sections 3 to 9 of this Chapter, are in addition to the powers conferred by the instrument, if any, creating the trust. Provided that nothing in section 8 contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. 2 Edw. VII, c. 4, s. 4.

5. Investments in debenture stock of company incorporated by laws of Dominion or of Province.—(1) It shall be lawful for a trustee, unless expressly forbidden by the instrument (if any) or authority creating the trust, to invest any trust funds in his hands in terminal debentures or debenture stock of any corporation incorporated under the laws of the Parliament of the Dominion of Canada, or of the Legislature of this Province, complying with and fulfilling the hereinafter specified conditions, provided such investment is in other respects reasonable and proper, and the debentures are registered and are transferable only on the books of the corporation in his name as the trustee for the particular trust estate for which they are held in such debentures or debenture stock as aforesaid.

(a.) **Subscribed capital of corporation, etc.**—Such corporation shall have a subscribed permanent capital of not less than three hundred thousand dollars, on which there has been paid not less than one hundred and twenty thousand dollars, and in case more than seventy-five per cent. of said subscribed capital is paid in, then such corporation must have a reserve fund set aside out of the profits of the corporation of not less than twenty-five per cent. of its paid-up capital, and its stock must have a market value of not less than seven per cent. premium.

(b.) **Corporation to be authorized to lend money, etc.**—Such corporation shall by its charter be authorized to lend money upon mortgage on real estate, or for that purpose and other purposes.

(c.) **Order in Council authorizing investments in debentures of corporation.**—Such corporation shall have obtained and hold an unrevoked order of the Lieutenant-Governor-in-Council approving of such corporation and authorizing and approving investments by trustees in the debentures thereof under the provisions of this Chapter.

(d.) **Renewal of order in Council on coming into force of Chapter.**—Upon the coming into force of this Chapter, any order in Council made under the provisions of Chapter 4 of the Acts of Assembly, 2 Edw. VII, approving of investments by trustees in the debentures of any company shall become revoked, but any company holding such order may apply for an order of the Lieu-

tenant-Governor-in-Council, to be made under the provisions of this Chapter, authorizing and approving investments by trustees in the debentures thereof, and unless such order is obtained and remains unrevoked, no trustee shall be authorized to invest in the debentures of such company. Provided, however, the revocation of any such existing order by the coming into force of this Chapter shall not affect the propriety of any investments before such revocation.

(2.) Deposit by corporation with Receiver General.—Before the Lieutenant-Governor-in-Council shall make any order allowing or approving of such investments in any such corporation, the corporation applying for such order shall deposit with the Receiver-General such sum, and increase or decrease the amount of such deposit from time to time, as the Lieutenant-Governor-in-Council shall by order fix and determine. In fixing the amount to be so deposited, regard shall be had to the amount of trust funds invested or likely to be invested by trustees in the Province, and to the proportion which the assets of the company bear to its liabilities and to the security afforded trustees by the corporation apart from such deposit. Such deposit shall remain and continue in the hands of the Government of the Province for the protection of trustees investing in such company under this Chapter, and notwithstanding any order authorizing the investment by trustees in the debentures of such company be revoked, such deposit shall not be returned to the company so long as any investments made by trustees in the debentures of such company under the provisions of this Chapter remain outstanding.

(3.) Receipt on deposit.—Interest on deposit.—Upon receiving any deposit made by any such corporation under the provision of this Chapter, the Receiver-General shall deliver to the corporation a receipt therefor signed by the Receiver-General, and there shall be paid to the company making such deposit interest on the amount at any time on deposit in the hands of the Receiver-General at the rate of three per centum per annum, such interest to be paid half-yearly by warrant in the usual manner. 2 Edw. VII, c. 4, ss. 5, 6, 7, *am.*

6. Revocation of order in Council not to affect existing investments.—No revocation by the Lieutenant-Governor-in-Council of any order in Council previously made approving of or allowing investments in the debentures or debenture stock of any corporation shall affect the propriety of investments made before such revocation. 2 Edw. VII, c. 4, s. 7, *part, am.*

7. Annual return by corporation.—Every corporation which is subject to the provisions of this Chapter, shall transmit on or before the first day of March in each year to the Provincial Secretary a statement in duplicate, to the 31st day of December, inclusive of the previous year, verified by the oath of the president or vice-president and the manager, setting out the capital stock of the corporation and the proportion thereof paid up, the assets and liabilities of the corporation, the amount and nature of the investments made by the corporation both on its own behalf and on behalf of others, and the average rate of interest derived therefrom, distinguishing the classes of securities, and also the extent and value of the lands held by it, and such other details as to the nature and extent of the business of the corporation as the Provincial Secretary requires, and in such form and with such details as he from time to time requires; but the corporation shall in no case be bound to disclose the name or private affairs of any person who has dealings with it.

8. Trustee not chargeable with breach of trust on loan based on report of value of property, etc.—(1) No trustee lending money upon the security of any property shall be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court that in making the loan the trustee was acting upon a report as to the value of the property made by a person whom the trustee reasonably believed to be an able, practical surveyor or valuer, instructed and employed independently of any owner of the property, whether such surveyor or valuer carried on business in the locality where the property is situate or elsewhere, and that the amount of the loan does not exceed two-thirds of the value of the property as stated in the report, and that the loan was made under the advice of the surveyor or valuer expressed in the report. This section shall apply to a loan upon any property on which the trustee can lawfully lend.

(2.) **Application of section.**—This section shall apply to transfers of existing securities. 2 Edw. VII, c. 4, s. 8.

9. Liability of trustee for amount of loan in excess of proper advance.—Where a trustee has improperly advanced trust money on a mortgage security which would, at the time of the investment, have been a proper investment in all respects for a less sum than was actually advanced thereon, the security shall be deemed an authorized investment for such less sum, and the trustee shall only be liable to make good the sum advanced in excess thereof with interest. 2 Edw. VII, c. 4, s. 9.

PART III.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

POWER TO INSURE.

10. Insurance and payment of premiums.—(1) A trustee may insure against loss or damage by fire any building, or other insurable property, to any amount (including the amount of any insurance already on foot), not exceeding three equal fourth parts of the full value of such building or property, and pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who may be entitled wholly or partly to such income.

(2.) **Exception.**—This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested to do so.

(3.) **Application of section.**—This section applied to trusts created either before or after the commencement of this Chapter, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do by the instrument creating the trust. (See Imp. Acts, 56 and 57 V., c. 53, s. 18.)

PURCHASE AND SALE.

11. Powers of trustee under trust for sale or power of sale.—(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract for sale and to buy in at any auction, or to rescind any contract for sale and re-sell, without being answerable for any loss.

(2) **Section subject to trust instrument.**—This section applies only if and as far as a contrary intention is not expressed in the instrument creating the trust or power, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3) **Application of section.**—This section applies only to a trust or power created by an instrument coming into operation after the commencement of this Chapter. (See Imp. Acts, 56 and 57 V., c. 53, s. 13.)

12. Effect of trustees' written receipt.—(1) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2) **Application of section.**—This section applies to trusts created either before or after the commencement of this Chapter. (See Imp. Acts, 56 and 57 V., c. 53, s. 20.)

13. Purchasers not bound to see to application of purchase money.—In cases of sales of real or personal estate duly made by trustees, executors or mortgagees, the purchasers shall not be bound to see to the application of the purchase money. 53 V., c. 4, s. 211.

14. Executor, administrator, or trustees, may compound debts, etc.—(1) An executor or administrator, or two or more trustees, acting together, or a sole acting trustee, where by the instrument, if any, creating the trust, a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they may think fit, accept any composition or any security, real or personal, for any debt, or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(2) **Section subject to trust instrument.**—This section applies only if and as far as a contrary intention is not expressed in the instrument, if any, creating the trust, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(3.) **Application of section.**—This section applies to executorships, administratorships and trusts constituted or created either before or after the commencement of this Chapter. (See Imp. Acts, 56 and 57 V., c. 53, s. 21.)

LEASEHOLDS—DUTIES OF TRUSTEES AS TO RENEWING LEASE.

15. Power of trustees of leaseholds, to renew, and raise money for the purpose.—(1) A trustee of any leaseholds for lives or years which are renewable from time to time, either under any covenant or contract, or by custom or usual practice, may, if he thinks fit, and shall, if thereto required by any person having any beneficial interest, present or future, or contingent, in the leaseholds, use his best endeavours, to obtain from time to time a renewed lease of the same hereditaments on the accustomed and reasonable terms, and for that purpose may from time to time make or concur in making a surrender of the lease for the time being subsisting, and do all such other acts as are requisite. Provided that, where by the terms of the settlement or will the person in possession for his life or other limited interest is entitled to enjoy the same without any obligation to renew or to contribute, to the expense of renewal, this section shall not apply unless the consent in writing of that person is obtained to the renewal on the part of the trustees.

(2) If money is required to pay for the renewal, the trustee effecting the renewal may pay the same out of any money then in his hands in trust for the persons beneficially interested in the lands to be comprised in the renewed lease, and if he has not in his hands sufficient money for the purpose, he may raise the money required by mortgage of the hereditaments to be comprised in the renewed lease, or of any other hereditaments for the time being subject to the uses or trusts to which those hereditaments are subject, and no person advancing money upon a mortgage purporting to be under this power shall be bound to see that the money is wanted, or that no more is raised than is wanted for the purpose.

(3.) **Application of section.**—This section applies to trusts created either before or after the commencement of this Chapter, but nothing in this section shall authorize any trustee to do anything which he is in express terms forbidden to do or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. (See Imp. Acts, 56 and 57 V., c. 53, s. 19.)

SURVIVING TRUSTEE, POWERS OF

16. Powers of survivor of trustees.—Where a power or trust is hereafter given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instruments, if any, creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being. (See Imp. Acts, 56 and 57 V., c. 53, s. 22 (1).)

WHEN TRUSTEE CHARGEABLE ONLY WITH HIS OWN ACTS,
RECEIPTS OR DEFAULTS.

17. Trustee chargeable only with own acts, receipts, defaults, etc.—A trustee shall without prejudice to the provisions of the instrument, if any, creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects or defaults, and not for those of any other trustee, nor for any banker, broker, or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself or pay or discharge out of the trust premises, all expenses incurred in or about the execution of his trusts or powers. (See Imp. Acts, 56 and 57 V., c. 53, s. 24.)

MAINTENANCE OF INFANTS.

18. Application by trustees of income for maintenance of infant.—(1) Where any property is held by trustees in trust for an infant, either for life, or for any greater interest, and whether absolutely or contingent'y on his attaining the age of twenty-one years, or on the occurrence of any event before his attaining that age, the trustees may, at their sole discretion, pay to the infant's parent or guardian, if any, or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is any other fund applicable to the same purpose or any person bound by law to provide for the infant's maintenance or education, or not.

2. Accumulation—The trustees shall accumulate all the residue of that income in the way of compound interest by investing the same and the resulting income thereof from time to time, on securities on which they are by the settlement, if any, or by law authorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise; but so that the trustees may at any time, if they think fit, apply those accumulations or any part thereof as if the same were income arising in the then current year.

(3.) Variation of powers by trust instrument.—This section applies only if and as far as a contrary intention is not expressed in the instrument under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

(4.) Application of section.—This section applies whether that instrument comes into operation before or after the commencement of this Chapter. (See Imp. Acts, 23 and 24 V., c. 145, s. 26; 44 and 45 V., c. 41, s. 43.)

PART IV.

POWERS OF THE COURT.

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS AS TO LAND.

19. Vesting orders, and orders releasing contingent rights as to land.—In any of the following cases, namely:—

(1) Where the Supreme Court in Equity appoints or has appointed a new trustee; or

(2) Where a trustee entitled to, or possessed of any land, or entitled to a contingent right therein, either solely, or jointly with any other person,—

(a) is an infant; or

(b) is out of New Brunswick; or

(c) cannot be found; or

(3) Where it is uncertain who was the survivor of two or more trustees jointly entitled to, or possessed of, any land; or

(4) Where, as to the last trustee known to have been entitled to, or possessed of any land, it is uncertain whether he is living or dead; or

(5) Where there is no heir, or personal representative of a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative, or devisee, of a trustee who was entitled to, or possessed of, land, and is dead; or

(6) Where a trustee jointly, or solely, entitled to, or possessed of any land, or entitled to a contingent right therein, has been required by or on behalf of a person entitled to require a conveyance of the land, or a release of the right to convey the land or to release the right, and has wilfully refused or neglected to convey the land, or release the right, for fourteen days after the date of the requirement;

the Supreme Court in Equity may make an order (in this Chapter called a vesting order) vesting the land in any such person in any such manner, and for any such estate as the court may direct, or releasing or disposing of the contingent right to such person as the court may direct; provided that—

(a) Where the order is consequential on the appointment of a new trustee, the land shall be vested for such estate as the court may direct, in the persons who, on the appointment, are the trustees; and

(b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of New Brunswick, or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. (See Imp. Act, 56 and 57 V., c. 53, s. 26.)

20. Power to vest lands of lunatic trustee or mortgagee.—Where any lunatic, or person of unsound mind, is seized, or possessed of any lands upon any trust, or by way of mortgage, the Supreme Court in Equity may make an order that such lands be vested in such person in such manner and for such estate as the said court shall direct; and the order shall have the same effect as if the trustee, or mortgagee had been sane, and had duly executed a conveyance or assignment of the land in the same manner for the same estate. (See Imp. Act, 13 and 14 V., c. 60, s. 3; 53 and 54 V., c. 5, s. 135 (1) (3)).

21. Power to release contingent right of lunatic trustee or mortgagee.—Where any lunatic, or person of unsound mind, shall be entitled to any contingent right in any lands upon any trust, or by way of mortgage, the said Supreme Court in Equity may make an order wholly releasing such lands from such contingent right, or disposing of the same to such person as the said court shall direct; and the order shall have the same effect as if the trustee, or mortgagee had been sane, and had duly executed a deed so releasing, or disposing of the contingent right. (See Imp. Acts, 13 and 14 V., c. 60, s. 4; 53 and 54 V., c. 5, s. 135 (2) (3).)

22. Releasing or vesting orders as to contingent rights of unborn persons.—Where any land is subject to a contingent right in an unborn person, or class of unborn persons, who, upon coming into existence would, in respect thereof, become entitled to, or possessed of the land on any trust, the Supreme Court in Equity may make an order releasing the land from the contingent right, or may make an order vesting in any person the estate to or of which, the unborn person, or class of unborn persons, would, on coming into existence, be entitled or possessed in the land. (See Imp. Act, 13 and 14 V., c. 60, s. 16; 56 and 57 V., c. 53, s. 27.)

23. Vesting order in place of conveyance by infant mortgagee.—Where any person entitled to or possessed of land, or entitled to a contingent right in land, by way of security for money, is an infant, the Supreme Court in Equity may make an order vesting, or releasing, or disposing of the land or right in like manner as in the case of an infant trustee. (See Imp. Acts, 13 and 14 V., c. 60, ss. 7 and 8; 56 and 57 V., c. 53, s. 28.)

NOTE—See Chapter 112, ss. 219, 220, as to powers of court to remove trustees, and as to rights vesting in substituted trustees, appointed by the court.

24. Vesting order in place of conveyance by heir, or devisee of heir, etc., or personal representative of mortgagee.—Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect of the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to any order for the reconveyance of the land, then the Supreme Court in Equity may make an order vesting the land in such person or persons, in such manner, and for such estate, as the court may direct in any of the following cases, namely;—

(a) Where an heir, or personal representative, or devisee of the mortgagee is out of New Brunswick, or cannot be found; or

(b) Where an heir, or personal representative, or devisee of the mortgagee, on demand made by or on behalf of a person entitled to require a conveyance of the land has stated in writing that he will not convey the same, or does not convey the same for the space of fourteen days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; or

(c) Where it is uncertain which of several devisees of the mortgagee was the survivor; or

(d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; or

(e) Where there is no heir or personal representative of a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal re-

presentative, or devisee. (See Imp. Acts, 13 and 14 V., c. 60 s. 19; 56 and 57 V., c. 53, s. 29.)

25. Vesting order consequential on judgment for sale or mortgage of land.—Where any court gives a judgment, or makes an order, directing the sale or mortgage of any land, every person who is entitled to, or possessed of, the land, or entitled to a contingent right therein as heir, or under the will of a deceased person, for payment of whose debts the judgment was given, or order made, and is a party to the action or proceeding in which the judgment, or order, is given, or made, or is otherwise bound by the judgment, or order, shall be deemed to be so entitled, or possessed, as the case may be, as a trustee within the meaning of this Chapter; and the Supreme Court in Equity may, if it thinks expedient, make an order vesting the land, or any part thereof, for such estate as that court thinks fit, in the purchaser, or mortgagee, or in any other person. (See Imp. Act, 56 and 57 V., c. 53, s. 30.)

26. Vesting order consequential on judgment for specific performance, partition, conveyance of land, etc.—(1) Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land, either in cases arising out of the doctrine of election, or otherwise, the Supreme Court in Equity may declare that any of the parties to the action are trustees of the land, or any part thereof, within the meaning of this Chapter, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will, or voluntary settlement, of any person deceased, who was, during his lifetime a party to the contract or transactions concerning which the judgment is given, are the interests of persons who, on coming into existence, would be trustees within the meaning of this Chapter, and thereupon the Supreme Court in Equity may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. (See Imp. Act, 56 and 57 V., c. 53, s. 31.)

(2) **Section applicable to lands of infants and lunatics directed to be partitioned.**—The provisions of this section shall, when necessary be applicable to the interests of infants and lunatics in any lands directed to be partitioned. 53 V., c. 4, s. 197.

EFFECT OF VESTING ORDERS OF LANDS.

27. Effect of vesting order.—A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the Supreme Court in Equity directs, or if there is no such person, or no such person of full capacity, then as if such person had existed, and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the Court directs, and shall in every other case have the same effect as if the trustee, or other person, or description or class of persons, to whose rights or supposed rights the said provisions respectively relate, had been an ascertained and existing person of full capacity, and had executed a conveyance or release to the effect intended by the order. (See Imp. Act, 56 and 57 V., c. 53, s. 32.)

APPOINTMENT OF PERSONS TO CONVEY.

28. Power to appoint person to convey.—In all cases where a vesting order can be made under any of the foregoing provisions, the Supreme Court in Equity may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance, or release, by that person in conformity with the order shall have the same effect as an order under the appropriate provision. (See Imp. Act, 56 and 57 V., c. 53, s. 33.)

VESTING ORDERS, AND ORDERS RELEASING CONTINGENT RIGHTS AS TO STOCKS, AND CHOSSES IN ACTION.

29. Vesting orders, and orders releasing contingent rights, as to stocks and choses in action.—In any of the following cases, namely:—

(1) Where the Supreme Court in Equity appoints, or has appointed, a new trustee;

(2) Where a trustee entitled alone, or jointly with another person, to stock, or to a chose in action—

(a) is an infant; or

(b) is out of New Brunswick; or

(c) cannot be found; or

(d) neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover, a chose in action, according to the direction of the person absolutely entitled thereto, for fourteen days next after a request in writing has been made to him by the person so entitled; or

(e) Neglects or refuses to transfer stock, or receive the dividends or income thereof, or to sue for, or recover a chose in action, for fourteen days next after an order of the Supreme Court in Equity for that purpose has been served on him; or

(3) Where it is uncertain whether a trustee entitled alone, or jointly with another person, to stock, or to a chose in action is alive or dead, the Supreme Court in Equity may make an order vesting the right to transfer, or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for, or recover a chose in action, in any such person as the court may appoint;

Provided that—

(a) Where the order is consequential on the appointment by the court of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) Where the person whose right is dealt with by the order was entitled jointly with another person the right shall be vested in that last mentioned person either alone, or jointly with any other person whom the court may appoint.

(4) In all cases where a vesting order can be made under this section, the court may, if it is more convenient, appoint some proper person to make, or join in making, the transfer.

(5) The person in whom the right to transfer, or call for the transfer of, any stock is vested by an order of the Supreme Court in Equity under this Chapter, may transfer the stock to himself, or any other person according to the order, and all incorporated banks and all companies shall obey every order under this section according to its tenor.

(6) After notice in writing of an order under this section it shall not be lawful for any incorporated bank, or any company, to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(7) The Supreme Court in Equity may make declarations and give directions concerning the manner in which the right to any stock, or chose in action, vested under the provisions of this Chapter, is to be exercised.

(8) The provisions of this Chapter as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping, as if they were stock. (See Imp. Act, 56 and 57 V., c. 53, s. 35).

30. Order vesting right of lunatic trustee to transfer stock and sue for chose in action.—Where any lunatic, or person of unsound mind, shall be solely entitled to any stock, or to any chose in action upon any trust, or by way of mortgage, it shall be lawful for the said Supreme Court in Equity to make an order vesting in any person, or persons, the right to transfer or call for a transfer of such stock, or to receive the dividends or income thereof, or to sue for and recover such chose in action, or any interest in respect thereof; and when any person, or persons, shall be entitled jointly with any lunatic, or person of unsound mind, to any stock, or chose in action, upon any trust, or by way of mortgage, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover, such chose in action, or any interest in respect thereof, either in such person or persons so jointly entitled as aforesaid, or in such last mentioned person or persons together with any other person or persons the said court may appoint. (See Imp. Acts, 13 and 14 V., c. 60, s. 5; 53 and 54 V., c. 5, s. 136 (1) (2).)

31 Order vesting right of lunatic personal representative to transfer stock and sue for chose in action.—Where any stock shall be standing in the name of any deceased person whose personal representative is a lunatic, or person of unsound mind, or where any chose in action shall be vested in any lunatic, or person of unsound mind, as the personal representative of a deceased person, it shall be lawful for the said court to make an order vesting the right to transfer such stock, or to receive the dividends or income thereof, or to sue for, and recover such chose in action, or any interest in respect thereof, in any person the court may appoint. (See Imp. Acts, 13 and 14 V., c. 60, s. 6; 53 and 54 V., c. 5, s. 136 (3).

EFFECT OF VESTING ORDERS OF STOCK AND CHOSSES IN ACTION.

32. Effect of order vesting right to sue for stock or chose in action.—Where any order shall have been made under the provisions of this Chapter by the said Supreme Court in Equity vesting the legal right to sue for, or recover any stock or any chose in action, or any interest in respect thereof, in any person, such legal right shall vest accordingly, and thereupon it shall be lawful for the person so appointed to carry on, commence and prosecute, in his own name any action, or proceeding, for the recovery of such chose in action, in the same manner in all respects as the person

in whose place an appointment shall have been made could have sued for, or recovered such chose in action. (See Imp. Acts, 13 and 14 V., c. 60, s. 27; 15 and 16 V., c. 55, s. 6; 56 and 57 V., c. 53, s. 32.)

INDEMNITY.

33. Protection of banks, etc., acting under Chapter.—

This Chapter, and every order purporting to be made under this Chapter, shall be a complete indemnity to all incorporated banks, and to all companies and persons for any acts done pursuant thereto; and it shall not be necessary for any bank, company, or person to inquire concerning the propriety of the order, or whether the court by which it was made had jurisdiction to make the same, (See Imp. Acts, 15 and 16 V., c. 55, s. 7; 56 and 57 V., c. 53, s. 49.)

DISCHARGE OF LANDS CHARGED WITH PAYMENT OF MONEY, ON PAYMENT INTO COURT IN CERTAIN CASES.

34. Payment into Court in discharge of lands, stock, etc., of infant or lunatic, conveyed or transferred under Chapter.—

Where any infant or person of unsound mind shall be entitled to any money payable in discharge of any lands, stock, or chose in action, conveyed, assigned or transferred under this Chapter, it shall be lawful for the person by whom such money is payable, to pay the same into the Supreme Court in Equity, in trust, in any cause then depending concerning such money, or if there be no cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the said court. (See Imp. Act, 13 and 14 V., c. 60, s. 48.)

APPOINTMENT OF NEW TRUSTEES AND VESTING ORDERS.

35. Power of Court to appoint new trustees.—Felon or bankrupt trustee.—

(1.) The Supreme Court in Equity may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee in particular; and without prejudice to the generality of the foregoing provision, the court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2.) **Effect of order under section.—**An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated.

(3.) **No power to appoint executor or administrator.—**Nothing in this section shall give power to appoint an executor or administrator. (See Imp. Acts, 13 and 14 V., c. 60, ss. 32 and 36; 15 and 16 V., c. 55, ss. 8 and 9.) (See Chap. 112, s. 219.)

36. Who entitled to apply for orders under Chapter.—

An order under any of the hereinbefore contained provisions for the appointment of a new trustee or trustees, or concerning any

lands, stock, or chose in action subject to a trust, may be made upon the application of any person beneficially interested in such lands, stock, or chose in action, whether under disability or not, or upon the application of any person duly appointed as a trustee thereof; and an order under any of the provisions hereinbefore contained concerning any lands, stock, or chose in action, subject to a mortgage, may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the moneys secured by such mortgage. (See Imp. Acts, 13 and 14 V., c. 60, s. 37; 56 and 57 V., c. 53, s. 36.)

37. Mode of application for order.—Any person entitled in manner aforesaid to apply for an order may present a petition in the first instance to the said court for such an order as he may deem himself entitled to, and may give evidence by affidavit or otherwise in support of such petition, and may serve such person or persons with notice of such petition as he may deem entitled thereto. (See Imp. Act, 13 and 14 V., c. 60, s. 40.)

38. Reference on application for order, etc.—Upon the hearing of any such application the said court may direct a reference to inquire into any facts which require investigation, or may direct the application to stand over to enable fuller evidence to be adduced, or further notice to be served, or may dismiss the application, or make any order thereupon in conformity with the provisions of this Chapter. (See Imp. Act, 13 and 14 V., c. 60, ss. 41, 42).

39. When order to be made.—Where in any proceeding the facts necessary for an order under this Chapter shall appear to the court to be sufficiently proved, the said court may make such order. (See Imp. Act, 13 and 14 V., c. 60, s. 43.)

40. Order to be conclusive evidence of allegations upon which it is founded.—Where a vesting order is made as to any land under this Chapter, founded on an allegation of the personal incapacity of a trustee, or mortgagee, or on an allegation that a trustee, or the heir, or personal representative, or devisee, of a mortgagee, is out of New Brunswick, or cannot be found, or that it is uncertain which of the several trustees, or which of the several devisees of a mortgagee was the survivor, or whether the last trustee, or the heir, or personal representative, or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee, or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative, or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this section shall not prevent the Supreme Court in Equity from directing a reconveyance, or the payment of costs occasioned by any such order, if improperly obtained. (See Imp. Acts, 13 and 14 V., c. 60, s. 44; 56 and 57 V., c. 53, s. 40.)

41. Vesting orders in favor of trustees of charities.—The Supreme Court in Equity may exercise the powers herein conferred for the purpose of vesting any lands, stock, or chose in action, in the trustee or trustees of any charity, or society, over which charity or society the said court would have jurisdiction, upon action duly instituted, whether such trustee or trustees shall have been duly appointed by any power contained in any deed or instrument,

or by the order or judgment of the said Supreme Court in Equity, or by an order made upon a petition to the said court, under any Statute authorizing the said court to make an order to that effect in a summary way. (See Imp. Acts, 13 and 14 V., c. 60, s. 45; 56 and 57 V., c. 53, s. 39.)

JUDGMENT IN ABSENCE OF TRUSTEE.

42. Power to give judgment in absence of trustee.—(1)

Where in any action the Supreme Court in Equity is satisfied that diligent search and inquiry has been made after any person, who, in the character of a trustee, is made defendant in any action, to serve him with the process of the court, and that he cannot be found, the court may hear and determine the action, and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his counsel and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. (See Imp. Acts, 13 and 14 V., c. 60, s. 49; 56 and 57 V., c. 53, s. 43.)

(2) **Section not to affect right of action against trustee under ss. 23-27, Ch. 112.**—Nothing in this section shall deprive the plaintiff of the right to commence any action, and proceed against any trustee, as provided by sections 23 to 27 of Chapter 112 of these Consolidated Statutes.

43. Power of Court to direct costs to be paid out of trust estate.—The Supreme Court in Equity may order the costs and expenses of, and relating to, the petitions, orders, directions, conveyances, assignments and transfers, to be made in pursuance of this Chapter, or any of them, to be paid and raised out of, or from the lands, or personal estate, or the rents or produce thereof, in respect of which the same respectively shall be made, or to be borne and paid in such manner, and by such persons as the said court shall think proper. (See Imp. Acts, 13 and 14 V., c. 60, s. 51; 56 and 57 V., c. 53, s. 38.) (See Chap. 112, s. 124.)

ALLOWANCE TO TRUSTEES.

44. Compensation to trustees by Supreme Court in Equity or by Probate Court.—(1) Any trustee under a deed, settlement or will, and any guardian or committee of lunatic appointed by any court; and any testamentary guardian or any other trustee, howsoever the trust is created, shall be entitled to such fair and reasonable allowance for his care, pains and trouble, and his time expended in and about the trust estate, as may be allowed by the Supreme Court in Equity or Judge thereof, or, where the trustee or guardian is appointed by, or accountable to, the Probate Court, by the Probate Court, or Judge thereof.

(2) **Estate not before Court.**—The Judge in Equity, or the Probate Judge, as the case may be, may, on application to him for that purpose, settle the amount of such compensation, and out of what trust funds the same shall be paid, although the trust estate is not before the court in any action or other proceeding.

(3) **Section retrospective.**—Compensation may be allowed in the case of any trust heretofore created as well as of any hereafter to be created.

(4.) **Compensation fixed by trust instrument.**—Nothing in this section shall apply to any case in which the allowance is fixed by the instrument creating the trust, or is specially provided for otherwise by law.

(5.) **Compensation by Probate Court.—Saving of powers of Judge in Equity under s. 221, Ch. 112.**—Nothing in this section shall authorize any Judge of Probate to allow to any executor, administrator or trustee any other further compensation than is authorized and provided by section 57 of *The Probate Courts Act*, Chapter 118 of these Consolidated Statutes; and nothing in this section shall lessen or restrict any powers which the Judge in Equity has under section 221 of Chapter 112 of these Consolidated Statutes.

COMMISSION IN LUNACY.

45. Commission “de lunatico inquirendo.”—Upon any petition being presented to the Supreme Court in Equity, or a Judge thereof, concerning a person of unsound mind, it shall be lawful for the Judge, should he so think fit, to direct that a commission in the nature of a writ *de lunatico inquirendo* shall issue concerning such person, and to postpone making any order upon such petition until a return shall have been made to such commission; and it shall also be lawful for the Judge to postpone making any order upon such petition until the right of the petitioner or petitioners shall have been declared in a suit duly instituted for that purpose. (See Imp. Act, 13 and 14 V., c., 60, ss. 52 and 53). (See Chap. 112, s. 228.)

PAYMENT INTO COURT BY TRUSTEES.

46. Payment or deposit of securities into Court by trustees.—(1) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may apply to the Supreme Court in Equity, *ex parte* in chambers, for an order of the said court, authorizing them to pay into or deposit in the said court such money or securities; and the same shall, subject to Rules of Court, be dealt with according to the orders of the said Supreme Court in Equity.

(2) The certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into or deposited in court.

(3) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into or depositing the same in court, but the concurrence of the other or others cannot be obtained, the Supreme Court in Equity may order the payment into or deposit in court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any banker or broker, or other depositary, the court may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into or deposit in court, and every transfer, payment and delivery made in pursuance of such order, shall be valid, and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid or delivered.

(4) Moneys paid into or deposited in court under this section, shall be deposited with the Receiver-General in like manner as in

case of moneys paid in under section 136 of Chapter 112 of these Consolidated Statutes, and shall be subject to the provisions of subsections 2 to 4 of said section 136. (See Imp. Act, 56 and 57 V., c. 53, s. 42.)

47. Procedure on payment of money, etc., into Court by trustees.—(1) Subject to Rules of Court and except as otherwise directed or allowed in any case by the court the following procedure shall be observed:—On an application to pay money into court, or to deposit securities in court under this Chapter, the applicant shall file an affidavit entitled in the Supreme Court in Equity, "In the matter of (specifying shortly the trust and the instrument creating it)," which affidavit shall set forth:—

(a) The deponent's name and address;

(b) The amount and description of the moneys or securities in question;

(c) A statement whether the succession duty (if chargeable) or any part thereof has been paid;

(d) The names and addresses, as far as known to the deponent, of all persons interested in or entitled to, the moneys or securities in question; and whether or not such persons are under any disability, by reason of infancy, or unsoundness of mind, to the best of his knowledge and belief;

(e) His submission to answer all such questions relating to the application of the money and securities in question as the court or judge may make or direct;

(f) The place where he is to be served with any petition, notice, or other proceeding, relating to the money or securities in question, or the name of a solicitor of the court upon whom such service may be made.

(2) Every order made on such application shall direct the applicant forthwith to give notice thereof, to such persons interested, and in such manner as the court shall direct; and such order may direct such notice to be given by prepaid letter through the post, to the several persons interested in or entitled to the moneys or securities paid into or deposited in court whose names and places of residence are stated by affidavit, as provided by clause (d) of subsection (1) of this section except that in the case of infants, or persons of unsound mind, such notice shall be given to the guardian, if any, of the infants, and to the committee of persons of unsound mind, or to such person or persons as the court may direct.

(3) The notice of an order made under this Chapter may be in the following form, or to the like effect:—

"IN THE SUPREME COURT IN EQUITY.

"In the matter of (*specifying trust, etc., as in the affidavit*).

"Take notice that pursuant to the order of the court, dated the _____ day of _____, I have paid into court to the credit of the above mentioned matter \$ _____, or I have deposited in the court to the credit of the above mentioned matter the following securities (*specifying them*) in which moneys (*or securities*) you appear to be interested as (*stating shortly how, e. g., as legatee under the will of A. B.*)

"Dated this _____ day of _____

(*Signature of applicant in person or by his solicitor.*)"

(4) Notice of all applications respecting money or securities paid into, or deposited in court under this chapter shall be served on the trustee, and the person directed to be notified of such payment or deposit, unless such service be dispensed with by the court or judge.

PART V.

PROTECTION AND RELIEF.

48. Order of Court for indemnity of trustee by beneficiary for breach of trust committed at his instance.—(1) Where a trustee commits a breach of trust at the instigation or request, or with the consent in writing, of a beneficiary, the court may, if it thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use, whether with or without a restraint upon anticipation, make such order as to the court seems just for impounding all or any part of the interest of the beneficiary in the trust estate by way of indemnity to the trustee or person claiming through him.

(2) **Application of section.**— This section shall apply to breaches of trust committed as well before as after the coming into force of this chapter, except where an action or other proceeding was at the date this chapter comes into force pending with reference thereto. (See Imp. Act, 56 and 57 V., c. 53, s. 45).

49. Relief of trustee from breach of trust.— Where in any suit or proceeding in the Supreme Court in Equity it appears to the court that a trustee is or may be personally liable for any breach of trust, whether the transaction alleged to be a breach of trust occurred before or after the passing of this Chapter, but has acted honestly and reasonably, and ought fairly to be excused for the breach of trust, and for omitting to obtain the directions of the court in the matter in which he committed such breach, then the court may relieve the trustee, either wholly or partly from personal liability for the same. 61 V., c. 26.

WHEN STATUTE OF LIMITATIONS MAY BE PLEADED.

50. When Statute of Limitations may be pleaded by trustees.—(1) In any action or other proceeding against a trustee, or any person claiming through him, except where the claim is founded upon any fraud or fraudulent breach of trust to which the trustee was party or privy, or is to recover trust property, or the proceeds thereof, still retained by the trustee, or previously received by the trustee and converted to his use, the following provisions shall apply:—

(a) All rights and privileges conferred by any Statute of Limitations shall be enjoyed in the like manner, and to the like extent, as they would have been enjoyed in such action or other proceeding, if the trustee, or person claiming through him, had not been a trustee, or person claiming through a trustee.

(b) If the action or other proceeding is brought to recover money or other property, and is one to which no existing Statute of Limitations applies the trustee or person claiming through him, shall be entitled to the benefit of, and be at liberty to plead the lapse of time as a bar to such action or proceeding in the like manner, and to the like extent, as if the claim had been against him in an action of debt for money had and received; but so, nevertheless,

that the Statute shall run against a married woman entitled in possession for her separate use, whether with or without a restraint upon anticipation, but shall not begin to run against any beneficiary unless and until the interest of such beneficiary becomes an interest in possession.

(2) No beneficiary, as against whom there would be a good defence by virtue of this section, shall derive any greater or other benefit from a judgment or order obtained by another beneficiary than he could have obtained if he had brought such action or other proceeding, and this section had been pleaded.

(3.) **Application of section.**— This section shall apply only to actions or other proceedings commenced after the coming into force of this chapter, and shall not deprive any executor or administrator of any right or defence to which he is entitled under any existing Statute of Limitations. (See Imp. Act, 51 and 52 V., c. 59, s. 8.)

C. S. N. B., 1903, CHAP. 163.

RESPECTING EXECUTORS AND TRUSTEES.

ACTIONS EX DELICTO BY AND AGAINST EXECUTORS.

1. Executors may sue for injuries to real estate of deceased, and be sued for injuries to real or personal estate by deceased.— An action in trespass or in any form applicable to the matter, may be maintained by the executor for any injury to the real estate of the deceased, if he could have recovered in his lifetime, and if committed within six months before his death, and the action be commenced within one year thereafter. The like action may be maintained against any executor for any injury to real or personal estate committed by the deceased, if committed within six months before his death, and the action be brought within six months after probate or administration, the damages in the first case to be part of the personal estate, and in the second, the amount of any judgment recovered by the plaintiff to be payable in like order of administration as the other debts of the deceased. 61 V., c. 35, s. 94.

DEATH OF JOINT CONTRACTOR—ACTION AGAINST REPRESENTATIVES OF DECEASED.

2. Action against representatives of deceased joint contractor, without joining co-contractor.— In case any one or more joint contractors, obligors or partners die, the person interested in the contract, obligation or promise entered into by such joint contractors, obligors or partners, may proceed by action against the representatives of the deceased contractor, obligor or partner, in the same manner as if the contract, obligation or promise had been joint and several, and this, notwithstanding there may be another person liable under such contract, obligation or promise, still living and no action pending against such person; but the property and effects of stockholders in chartered banks or the members of other incorporated companies, shall not be liable to a greater extent than they would have been if this action had not been passed.

POWER TO SELL, LEASE, ETC., UNDER WILL—WHO MAY EXERCISE IN CERTAIN CASES.

3. Executor to exercise direction in will to sell, etc., real estate where no other person named.—Where there is in any will or codicil of any deceased person (whether such will has been made, or such person has died before or after the coming into force of this Chapter), any direction whether express or implied, to sell, dispose of, appoint, mortgage, incur or lease any real estate, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute and carry the same into effect, the executor or executors (if any), named in such will or codicil, shall and may execute and carry into effect every such direction to sell, dispose of, appoint, incur or lease, such real estate, and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect as if the executor or executors of the testator were appointed by the testator to execute and carry the same into effect.

4. Exercise of power to executor to sell, etc., real estate, by administrator with will annexed.—Where there is in any will or codicil thereto of any deceased person (whether such will has or shall be made, or such person has died, or shall die, before or after the coming into force of this Chapter), any power to any executor or executors in such will to sell, dispose of, appoint, mortgage, incur, or lease any real estate, or any estate or interest therein, whether such power is express or arises by implication, and where from any cause letters of administration with such will annexed have been by a competent Court of Probate in this Province committed to any person, such person shall and may exercise every such power, and sell, dispose of, appoint, mortgage, incur or lease such real estate, and any estate or interest therein in as full, large and ample a manner, and with the same legal effect for all purposes, as the said executor or executors might have done.

5. Exercise of power in will to sell, etc., real estate where no person named to exercise power.—Where there is in any will or codicil thereto of any deceased person (whether such will has been made or such person has died before or after the coming into force of this Chapter), any power to sell, dispose of, appoint, mortgage, incur, or lease any real estate, or any estate or interest therein, whether such power is express, or arises by implication, and no person is by the said will, or some codicil thereto, or otherwise by the testator appointed to execute such power or in case the executor or other person appointed to execute such power dies before the testator, and letters of administration with such will annexed, have been by a Probate Court in this Province committed to any person, such person shall and may execute every such power, and sell, dispose of, appoint, mortgage, incur or lease such real estate, and any estate or interest therein, in as full, large and ample a manner, and with the same legal effect, as if such last named person had been appointed by the testator to execute such power.

6. Liabilities and duties of executor, etc., under preceding three sections.—Every executor and administrator with the will annexed, shall, as respects the additional powers vested in him by the next preceding three sections, and any money and assets by him received in consequence of the exercise of such powers, be subject to all the liabilities, and compellable to discharge all the duties of whatsoever kind, which, as respects the acts to be done by him

under such powers, would have been imposed upon an executor or other person appointed by the testator to execute the same, or in case of there being no such executor or person, would have been imposed by law upon any person appointed by law, or by any court of competent jurisdiction to execute such powers.

DEBTS OR LEGACY CHARGED BY TESTATOR ON LAND—HOW
RAISED IN THE ABSENCE OF EXPRESS PRO-
VISIONS THEREFOR.

7. Power to devisee in trust to raise money by sale or mortgage to pay debt or legacy charged on land, where want of power in will.—Where, by any will which shall come into operation after the commencement of this Chapter, the testator shall have charged his real estate or any specific portion thereof with the payment of his debts or with the payment of any legacy or other specific sum of money and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator to raise such debts, legacy or money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments, or any part thereof, or by a mortgage of the same, or partly in one mode, and partly in the other, and any deed or deeds of mortgage so executed, may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper. (See Imp. Act, 22 and 23 V., c. 35, s. 14.)

NOTE.—See Chapter 153, ss. 18, 19, as to executor's power to dis-train for rent due testator in his lifetime.

8. Power under preceding section to extend to survivors, etc.—The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent or devise, or to any person or persons who may be appointed under any power in the will, or by the Supreme Court in Equity, or Probate Court, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid. (Sec. Imp. Act, 22 and 23 V., c. 35, s. 15.)

9. Executors to have power of raising money, etc., where there is no sufficient devise.—If any testator who shall have created such a charge as is described in section 7 shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will, if any, shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons, if any, in whom the executorship shall for the time being be vested; but any sale or mortgage under this Chapter shall operate only on the estate and interest whether legal or equitable of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate. (See Imp. Act, 22 and 23 V., c. 35, s. 16.)

10. Purchasers, etc., not bound to inquire as to exercise of powers.—Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by the last preceding three sections of

this Chapter or either of them shall have been duly and correctly exercised by the person or persons acting in virtue thereof. (See Imp. Act, 22 and 23 V. c. 35, s. 17.)

11. Ss. 7-10 not to affect certain sales, etc., nor to extend to devise in fee, etc.—The provisions contained in sections 7 to 10 shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the commencement of this Chapter, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Chapter had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do. (See Imp. Act, 22 and 23 V., c. 35, s. 18.)

EXECUTOR ASSIGNING LEASE—WHEN NOT LIABLE ON COVENANTS.

12. Liability of executor, etc., in respect of rents, covenants or agreements.—Where an executor or administrator, liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered has satisfied all such liabilities under the said lease or agreement for a lease, as have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and has set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised, or agreed to be demised, although the period for laying out the same may not have arrived, and has assigned the lease, or agreement for a lease, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively without appropriating any part, or any further part (as the case may be), of the personal estate of the deceased, to meet any future liability under the said lease, or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, when necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease, or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. (See Imp. Act, 22 and 23 V., c. 35, s. 27.)

13. Liability of executor, etc., in respect of rents, etc., in conveyance on rent charge.—In like manner, where any executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent charge (whether any such rent be by limitation of use, grant or reservations), or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate, whose estate is being administered, shall have satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due, and been claimed, up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascer-

tained sum, covenanted or agreed by the grantee, to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance, or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for conveyance. But nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to, or among whom, the said assets may have been distributed. (See Imp. Act, 22 and 23 V., c. 35, s. 28.)

PROTECTION OF EXECUTOR ACTING ON PRESUMPTION OF TESTATOR'S DEATH.

14. Protection of persons acting as executors or administrators of persons presumed to be dead.—Where any one has been or is hereafter appointed by a court having jurisdiction in that behalf, administrator of the estate of any person who on account of absence for seven years or for any other reason has been presumed to be dead, or where probate of a will made by any such person has been or shall be granted by such court, all acts done under the authority of such appointment or probate, shall, notwithstanding it may thereafter appear that the presumption of death was erroneous, be as valid and effectual as such acts would have been had such person been dead; but the person erroneously presumed to be dead shall, subject to the provisions of sections 16 and 17, have the right to recover from the person acting as executor or administrator, any part of the estate remaining in his hands undistributed, and no more; and shall, subject to the provisions of the Statutes of Limitations, be entitled to recover from any one who received any portion of his estate as one of his next of kin, or as a devisee, legatee or heir, or as the husband or wife of such person, the portion so received, or the value thereof.

PROTECTION OF EXECUTORS, WHERE LATER WILL DIS- COVERED—OF ADMINISTRATORS, WHEN WILL DISCOVERED.

15. Protection of executors, where later will discovered, or of administrators where will discovered.—Where a will is admitted to probate, or a grant of administration is made with will annexed, or on account of supposed intestacy, by a court having jurisdiction in that behalf, all acts done under the authority of such will or grant of administration shall, notwithstanding it may afterwards appear that the deceased had left a will, or left a will which superseded that of which probate was granted or which was annexed to the said letters, or notwithstanding that it appears that the will admitted to probate or administration was not duly executed, or was

for any reason invalid, be as valid and effectual as such acts would have been if such will had been the last will of the deceased, and had been duly executed and had been valid, or in case of administration as on intestacy, as valid as such acts would have been if the deceased had died intestate; but upon the revocation of the grant of probate or administration, the new personal representative of the deceased shall, subject to the provisions of sections 16 and 17 have the right to recover from the person acting as executor or administrator as aforesaid any part of the estate remaining in his hands undistributed, and no more; and shall, subject to the provisions of the Statutes of Limitations, be entitled to recover from any one who erroneously received any portion of the estate of the deceased as one of his next of kin, or as a devisee, legatee or heir, or as the husband or wife of the deceased, the portion so received or the value thereof.

16. Costs of executors or administrators under last two sections.—The executor or administrator in the last two preceding sections shall have the right to retain out of any amount remaining in his hands undistributed his proper costs and expenses in the administration of the estate.

17. Preceding three sections not to protect persons acting fraudulently.—Nothing in the last three preceding sections contained shall protect any person acting as administrator or executor where such person has been privy to any fraud by means of which the grant of administration or probate was obtained, or in cases arising under section 14 in respect of anything done after he became aware that the person who was presumed to be dead is alive, or in cases arising under section 15, that the will was not duly executed or for some other reason was invalid, unless the thing so done was in pursuance of a contract for valuable consideration made before the said executor or administrator was aware to the effect aforesaid.

ACTION TO RECOVER PERSONAL ESTATE—LIMITATION AS TO TIME.

18. Action to recover personal estate of intestate, to be brought within twenty years.—After the commencement of this Chapter, no suit or other proceeding shall be brought to recover the personal estate, or any share of the personal estate, of any person dying intestate possessed by the legal personal representative of such intestate, but within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of such estate or share, or some interest in respect thereof shall have been accounted for, or paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person accountable for the same, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit shall be brought, but within twenty years after such accounting, payment or acknowledgment, or the last of such accountings, payments, or acknowledgments, if more than one was made or given. (See Imp. Act, 23 and 24 V., c. 38, s. 13.

ESTATE OF INHERITANCE IN TRUST, DEVOLUTION OF.

NOTE—See Chapter 152, s. 52, for provisions protecting trustee or executor acting under power of attorney while ignorant of death of or revocation by the person who gave the power.

19. Devolution of trust and mortgage estates on death.—

(1) Where an estate or interest of inheritance, or limited to the heir as special occupant, in any tenements or hereditaments, corporeal or incorporeal, is vested on any trust, in any person solely, the same shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time, in like manner as if the same were a chattel real vesting in them or him; and accordingly all the like powers for one only of several joint personal representatives, as well as for a single personal representative, and for all the personal representatives together, to dispose of and otherwise deal with the same, shall belong to the deceased's personal representatives or representative, from time to time, with all the like incidents, but subject to all the like rights, equities and obligations, as if the same were a chattel real, vesting in them or him; and for the purposes of this section, the personal representatives for the time being of the deceased, shall be deemed in law his heirs and assigns, within the meaning of all trusts and powers.

(2) This section applies only in cases of death after the commencement of this Chapter. (See Imp. Act, 44 and 45, V., c. 41, s. 30).

INFANT EXECUTOR.**20. Where infant sole executor, administration to be granted to guardian who shall have same power as an administrator "*durante minore aetate*."**—

(1) Where an infant is sole executor, administration with the will annexed shall be granted to the guardian of such infant, or to such other person as the Probate Court shall think fit, until such infant shall have attained the full age of twenty-one years, at which period, and not before, probate of the will shall be granted to him. (See Imp. Act, 38 Geo. III, c. 87, s. 6.)

(2) The person to whom such administration shall be granted shall have the same powers vested in him as an administrator now has, by virtue of an administration granted to him *durante minore aetate* of the next of kin. (See Imp. Act, 38 Geo. III, c. 87, s. 7).

NOTE.—See Chapter 161, s. 1 (2).

NOVA SCOTIA,

R. S. N. S., 1900. CHAP. 151.

OF TRUSTEES.

SHORT TITLE.

1. **Short title.**— This Chapter may be cited as "The Trustee Act."

INTERPRETATION.

2. **Interpretation.**—In this Chapter, unless the Context otherwise requires:

(a.) **"Contingent right."**— (a) The expression "contingent right," as applied to land, includes a contingent or executory interest, a possibility coupled with an interest, whether the object of the gift or limitation of the interest or possibility is or is not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent;

(b.) **"Convey."**—**"Conveyance."**— The expressions "convey" and "conveyance" applied to any person include the execution by that person of every necessary or suitable assurance for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of land whereof he is seised or possessed, or wherein he is entitled to a contingent right, either for his whole estate or for any less estate, together with the performance of all formalities required by law to the validity of the conveyance, including the acts to be performed by married women to bar dower or convey their interests in real property under the statutes of the province;

(c.) **"Court."**—**"Judge."**— The expression "court" means the Supreme Court of Nova Scotia, and the expression "judge" means a judge of such court;

(d.) **"Devisee."**— The expression "devisee," includes the heir of a devisee and the devisee of an heir, and any person who claims right by devolution of title of a similar description;

(e.) **"Instrument."**— The expression "instrument" includes a statute;

(f.) **"Land."**— The expression "land" includes incorporeal as well as corporeal hereditaments, and any interest therein, and also an undivided share of land;

(g.) **"Lunatic."**—**"Person of unsound mind."**— The expression "lunatic" means any person adjudged to be a lunatic under the statutes of the province, and the expression "person of unsound mind" means any person, not an infant, who not having been so adjudged to be a lunatic, is incapable from infirmity of mind of managing his own affairs;

(h.) **"Mortgage."**—**"Mortgagee."**— The expressions "mortgage" and "mortgagee" include and relate to every estate and interest regarded in equity as merely a security for money and every person deriving title under the original mortgagee;

(i.) **"Pay."**—**"Payment."**— The expressions "pay" and "payment" as applied in relation to stocks and securities, and in connection with the expression "into court," include the deposit or transfer of the same in or into court;

(j.) **"Possessed."**—The expression "possessed" applies to receipt of income of, and to any vested estate less than a life estate, legal or equitable, in possession, or in expectancy, in any land;

(k.) **"Property."**—The expression "property" includes real and personal property, and any estate and interest in any property, real or personal, and any debt, and any thing in action, and any other right or interest, whether in possession or not;

(l.) **"Rights."**—The expression "rights" includes estates and interests;

(m.) **"Securities."**—The expression "securities" includes stocks, funds and shares; and so far as relates to payments into court, means securities standing or deposited in the name or to the credit or account of the accountant general on behalf of the court, or placed to the credit of a cause, matter or account in the court;

(n.) **"Stock."**—The expression "stock" includes fully paid up shares; and, so far as relates to vesting orders made by the court under this Chapter, includes any fund, annuity, or security transferable in books kept by any company or society, or by an instrument of transfer either alone or accompanied by other formalities, and any share or interest therein;

(o.) **"Transfer."**—The expression "transfer," in relation to stock, includes the performance and execution of every deed, power of attorney, act, and thing on the part of the transferor to effect and complete the title in the transferee;

(p.) **"Trust."**—The expression "trust" does not include the duties incident to an estate conveyed by way of mortgage; but with this exception the expressions "trust" and "trustee" include implied and constructive trusts and cases where the trustee has a beneficial interest in the trust property, and the duties incident to the office of personal representative of a deceased person. 1888, c 11, s. 3 (1).

PART I.

INVESTMENTS.

3. Authorized investments.—A trustee may, unless expressly forbidden by the instrument (if any), creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, that is to say:—

(a.) **Savings' Bank.**—In the Dominion savings bank;

(b.) **Dominion, provincial, municipal, &c., debentures.**—In the debentures or bonds of the Dominion, province or of any city, town or municipality of the province;

(c.) **Mortgages.**—In mortgages of real property or in the stock of any bank to which any of the provisions of the Banking Act of the Dominion of Canada apply, or in deposit receipts of any of such banks;

(d.) **Securities approved by rule of court.**—In such other securities as are authorized by a general order of the Supreme Court; or

(e.) **By court or judge.**—In such other securities as the court or a judge upon application in any particular case selects as fit and proper,

(f) Or in bonds on debentures secured by a mortgage of real property,

and may also from time to time vary any such investment. 1888, c. 11, ss. 58, 64 part, 89. (As amended by 1 Edw. VII, c. 48, s. 1, and 7 Edw. VII, c. 61, s. 1.

(1) **Investment may be varied.**—A trustee may also, unless expressly forbidden by the instrument (if any) creating the trust, invest any trust funds in his hands, whether at the time in a state of investment or not, in the debentures of the company incorporated by the Acts 62-63 Victoria, Chapter 101, passed by the Parliament of Canada, and amendments thereto, and may also from time to time vary any such investment.

(2) **Security to holders.**—The mortgages or other securities, or the cash deposited by said Company from time to time with the Provincial Treasurer under chapter 4 of the Acts of Nova Scotia for the year 1903-4 as amended by chapter 12 of the Acts of Nova Scotia for the year 1906, in addition to being held as a security under the provisions of Section 11 of said last mentioned Act, shall also be held as security to the holders of such debentures assured to purchasers of the same residing within the Province of Nova Scotia. Added by 7 Edw. VII., c. 62, s. 1.

4. **Purchase at a premium of redeemable stock.**—(1) A trustee may under the powers of this Chapter invest in any of the securities mentioned in the next preceding section, notwithstanding that the same may be redeemable and that the price exceeds the redemption value.

(2) A trustee may retain until redemption any redeemable stock fund or security, which has been purchased in accordance with the powers of this Chapter.

5. **Discretion of trustees.**—Every power conferred by the preceding sections shall be exercised according to the discretion of the trustee, but subject to any consent required by the instrument (if any) creating the trust with respect to the investment of the trust fund.

6. **Application of preceding section, to trusts created before this Chapter.**—The preceding sections shall apply as well to trusts created before as to trusts created after the coming into force of this Chapter, and the powers thereby conferred shall be in addition to the powers conferred by the instrument (if any) creating the trust.

7. **Loans and investments by trustees not chargeable as breaches of trust.**—(1) A trustee lending money on the security of any property on which he can lawfully lend or investing in any bonds or debentures secured by a mortgage of real property authorized by this Chapter shall not be chargeable with breach of trust by reason only of the proportion borne by the amount of the loan to the value of the property at the time when the loan was made, provided that it appears to the court or judge that in making the loan,

(a) the trustee was acting upon a report as to the value of the property made by a person whom he reasonably believed to be a competent, practical valuer, instructed and employed independently of any owner of the property;

(b) that the amount of the loan does not exceed two equal third parts of the value of the property as stated in the report in cases in which such value does not exceed the sum of two thousand dollars; nor three equal fourth parts in cases in which such value exceeds the sum of two thousand dollars; and

(c) that the loan was made under the advice of the valuer expressed in the report.

(2.) This section applies to transfers of existing securities as well as to new securities, and to investments made as well before as after the coming into force of this Chapter. 1889, c. 18, s. 13. (As amended by 7 Edw. VII., c. 61, s. 2.)

8. Liabilities for loss by reason of improper investments.—

(1.) Where a trustee improperly advances trust money on a mortgage security, which would at the time of the investment be a proper investment in all respects for a smaller sum than is actually advanced thereon, the security shall be deemed an authorized investment for the smaller sum, and the trustee shall only be liable to make good the sum advanced in excess thereof, with interest.

(2.) This section applies to investments made as well before as after the coming into force of this Chapter, 1889, c. 18, s. 14.

9. If beneficiary requires it, notice of investment or change of investment to be given to beneficiary.—(1.) Where a beneficiary entitled in possession to receive the income of the trust fund for his life, or for a term of years determinable with his life, or for any greater estate, has given to the trustee a notice in writing that he desires to be consulted with regard to any proposed investments or changes of investment, notice in writing of any proposed investment or change of investment shall be first given by the trustee to such beneficiary.

(2.) Such notice shall contain a request that if the beneficiary objects to such proposal, he shall notify at least one of the trustees in writing of such objection within ten days after the receipt of such notice.

(3.) If the trustee receives a notice of any such objection he may apply to the court or a judge in a summary manner for leave to make such proposed investment, or change of investment, notwithstanding such objection.

(4.) Service of notice of the proposal or of the objection may be made either personally or by mailing the same, postage prepaid and registered, to the address of the person to be notified, and may be proved by an affidavit stating the fact and the mode of service.

(5.) The court or judge may authorize or refuse to authorize the proposed investment or change of investment, and shall have a discretion as to the disposal of the costs of the application.

(6.) No such notice of a proposed investment or change of investment shall be required to be given in the case of a release of a mortgage upon payment of the principal of a mortgage debtor, or of the temporary deposit on interest of the whole or any part of a fund in any solvent chartered bank in Canada. 1889, c. 18, s. 8; 1900, c. 31, s. 1.

10. Court to make rules as to investments and regulating same.—The Supreme Court may make rules regulating the proportion which the value of real property shall bear to the amount invested on the security thereof, the manner in which such value shall be ascertained, the minimum rate of interest to be charged on the sum invested, and all other particulars whatsoever relating to the investment of trust moneys on real securities, and shall also have power to add to or strike from the list of stocks hereinbefore mentioned, and to make all such rules as seem advisable with respect to investments of trust funds in such stock. Any investment made in violation of any such rule shall be at the risk of the trustee, executor or administrator making such investment; and the court or a judge upon application may enjoin any trustees, executor or administrator from investing trust money in violation of any such rule, and may compel him to pay into court any money so invested, and to invest the same in accordance with law or such regulations. 1888, c. 11, s. 64 (2.)

PART II.

VARIOUS POWERS AND DUTIES OF TRUSTEES.

*1.—Appointment of New Trustees.***11. Powers of appointing new trustees out of court.—**

When a trustee, either original or substituted and whether appointed by the court or a judge or otherwise, is dead, or remains out of the province for more than twelve months, or desires to be discharged from all or any of the trusts or powers reposed in or conferred on him, or refuses, or is unfit to act therein, or is incapable of acting therein, then the person or persons nominated for the purpose of appointing new trustees by the instrument (if any) creating the trust, or if there is no such person, or no such person able and willing to act, then (if the beneficiaries consent thereto in writing), the surviving or continuing trustees or trustee for the time being, or the personal representatives of the last surviving or continuing trustee, may, by writing, appoint another person or other persons to be a trustee or trustees in the place of the trustee dead, remaining out of the province, desiring to be discharged, refusing, or being unfit, or being incapable as aforesaid.

(2.) What may be done in making appointments.—

appointment of a new trustee for the whole or any part of trust property,—

(a.) the number of trustees may be increased; and

(b.) a separate set of trustees may be appointed for any part of the trust property held on trusts distinct from those relating to any other part or parts of the trust property, notwithstanding that no new trustees or trustee are or is to be appointed for other parts of the trust property, and any existing trustee may be appointed or remain one of such separate set of trustees, or, if only one trustee was originally appointed then one separate trustee may be so appointed for the first mentioned part; and

(c.) it shall not be obligatory to appoint more than one new trustee where only one trustee was originally appointed, or to fill up the original number of trustees where more than two trustees were originally appointed; but, except where only one trustee was originally appointed, a trustee shall not be discharged under this section from his trust unless there will be at least two trustees to perform the trust; and

(d.) any assurance or thing requisite for vesting the trust property, or any part thereof, jointly in the persons who are the trustees, shall be executed or done

(3.) Powers of trustee so appointed.—Every new trustee so appointed, as well before as after all the trust property becomes by law, or by assurance, or otherwise, vested in him, shall have the same powers, authorities, and discretions, and may in all respects act as if he had been originally appointed a trustee by the instrument (if any) creating the trust.

(4.) Application of section to trustee dead before testator, and to refusing or retiring trustee.—The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee, if willing to act in the execution of the provisions of this section.

(5.) **Section not to apply if a contrary intention expressed in instrument.**—This section applies only if and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(6.) **Applies to trusts created before this Chapter, &c.**—This section applies to trusts created either before or after the coming into force of this Chapter. 1888, c. 11, ss. 35 part, 41, 45; 1889, c. 18, ss. 5, 6.

12. Retirement of trustees.—(1.) Where there are more than two trustees, if one of them by deed declares that he is desirous of being discharged from the trust, and if his co-trustees and such other person (if any) as is empowered to appoint trustees, by deed consent to the discharge of the trustee, and to the vesting in the co-trustees alone of the trust property, then the trustee desirous of being discharged shall be deemed to have retired from the trust, and shall, by the deed, be discharged therefrom under this Chapter without any new trustee being appointed in his place.

(2.) Any assurance or thing requisite for vesting the trust property in the continuing trustees alone shall be executed or done.

(3.) This section applies only if, and as far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument and to any provisions therein contained.

(4.) This section applies to trusts created either before or after the coming into force of this Chapter. 1888, c. 11, s. 35; 1889, c. 18, ss. 5, 7.

13. Vesting of trust property in new or continuing trustees.—(1.) Where a deed by which a new trustee is appointed to perform any trust contains a declaration by the appointor to the effect that any estate or interest in any land subject to the trust, or in any chattel so subject, or the right to recover and receive any debt or other thing in action so subject, shall vest in the persons who by virtue of the deed become and are the trustees for performing the trust, that declaration shall, without any conveyance or assignment, operate to vest in those persons, as joint tenants, and for the purposes of the trust, that estate, interest, or right.

(2.) Where a deed by which a retiring trustee is discharged under this Chapter contains such a declaration as is in this section mentioned by the retiring and continuing trustees, and by the other person (if any) empowered to appoint trustees, that declaration shall, without any conveyance or assignment, operate to vest in the continuing trustees alone, as joint tenants, and for the purposes of the trust, the estate, interest, or right to which the declaration relates.

(3.) This section does not extend to land conveyed by way of mortgage for securing money subject to the trust or to any such share, stock, annuity, or property as is only transferable in books kept by a company or other body, or in manner prescribed by or under an Act of parliament or of the legislature of this province.

(4.) For purposes of registration of the deed in any registry, the person or persons making the declaration shall be deemed the conveying party or parties, and the conveyance shall be deemed to be made by him or them under a power conferred by this Chapter.

(5.) This section applies only to deeds executed after the seventeenth day of April, A.D., 1889. 1889, c. 18, s. 11.

2.—Purchase and Sale.

14. Power of trustee for sale, to sell by auction, etc.—(1) Where a trust for sale or a power of sale of property is vested in a trustee, he may sell or concur with any other person in selling all or any part of the property, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to any such conditions respecting title or evidence of title or other matter as the trustee thinks fit, with power to vary any contract of sale, and to buy in at any auction, or to rescind any contract for sale, and to re-sell without being answerable for any loss.

(2.) **May exchange, &c.**—If the power expressly authorizes an exchange he may make an exchange of any land or any part thereof for any other land in Nova Scotia, including an exchange in consideration of money paid for equality of exchange.

(3.) **Not bound to inquire if particular reinvestment is in contemplation.**—No purchaser under any such sale shall be bound to inquire whether the trustees or other persons making the same have or have not in contemplation any particular reinvestment of the purchase money.

(4.) **Power to convey, &c.**—For the purpose of completing any such sale or exchange, the trustees or other persons empowered to sell or exchange shall have full power to convey or otherwise dispose of the property in question, either by the way of revocation and appointment of the use or otherwise as is necessary.

(5.) **Money received to be invested.**—The money so received upon any such sale or for equality of exchange, subject to,—

(a) Payment of claims properly payable thereout, and

(b) Payment of consideration money for equality of exchange (if any), shall be invested by the trustees according to the provisions of this Chapter.

(6.) **Property or securities acquired subject to trusts, &c., of property given in exchange.**—The property or securities so acquired by the trustee shall be held to the uses, upon and for the trusts, intents and purposes, and with, under and subject to the powers, provisions and declarations to which the property sold or given in exchange was or would have been subject, or as near thereto as circumstances admit of, but not so as to increase or multiply charges.

(7.) **May be applied in paying off incumbrances, etc.**—The trustee or other person exercising any such power, may if he thinks fit, apply any money received upon any such sale, or for equality of exchange, or any part thereof, in or towards paying off or discharging any mortgage or other charge or encumbrance which affects the property or any part thereof which is then subject to the same uses or trusts as those to which the property or part sold is given in exchange was subject.

(8.) **Money until disposed of, etc., to be invested at interest.**—Until the money received upon any such sale or for equality of exchange is disposed of in the manner in this section mentioned, the same shall be invested at interest for the benefit of the same persons who would be entitled to the property or securities to be purchased or acquired therewith, and the rents, profits, dividends or interest thereof in case such purchase, acquisition and settlement were then actually made.

(9.) **Such sale or exchange must be consented to by per-**

son authorized to consent, unless a different intention appears from instrument.—No such sale or exchange, and no purchase or acquisition of property or securities out of money received on any such sale or exchange shall be made without the consent of the person appointed to consent by the will, deed or other instrument, or if no such person is appointed, then of the person entitled in possession to the receipt of the rents and profits of such property, if there is such a person under no disability; but this sub-section shall not be taken to require the consent of any person where it appears from the will, deed or other instrument to have been intended that such sale, exchange or purchase should be made by the trustee or other person making the same without the consent of any other person. 1888, c. 11, ss. 50-56; 1889, c. 18, s. 3 (part).

15. Power to sell subject to depreciatory conditions.—(1) No sale made by a trustee shall be impeached by any beneficiary upon the ground that any of the conditions subject to which the sale was made have been unnecessarily depreciatory, unless it also appears that the consideration for the sale was thereby rendered inadequate.

(2) No sale made by a trustee shall after the execution of the conveyance be impeached as against the purchaser upon the ground that any of the conditions subject to which the sale was made may have been unnecessarily depreciatory, unless it appears that the purchaser was acting in collusion with the trustee at the time when the contract for such sale was made.

(3) No purchaser upon any sale made by a trustee shall be at liberty to make any objection against the title upon the ground aforesaid. 1889, c. 18, s. 12 (part).

16. Power to sell includes power to mortgage or to lease.—

(1) Wherever a power to sell real property is given to any executor or trustee such power shall include a power to mortgage or lease, unless the instrument expressly excludes it.

(2) This section applies to powers given by instruments executed before the 17th of April, A.D., 1889. 1889, c. 18, s. 20.

17. Married woman as a bare trustee may convey.—When any freehold hereditament is vested in a married woman as a bare trustee she may convey it as if she was a *feme sole*. 1888, c. 11, s. 66.

3.—Miscellaneous Powers and Liabilities.

18. Power to authorize receipt of money by bank or solicitor.—(1) A trustee may appoint a solicitor to be his agent to receive and give a discharge for any money or valuable consideration or property receivable by the trustee under the trust, by permitting the solicitor to have the custody of, and to produce, a deed containing in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the trustee.

(2) Such deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor without the solicitor producing any separate or other direction or authority in that behalf from the trustee.

(3) A trustee may appoint a bank or solicitor to be his agent to receive and give a discharge for any money payable to the trustee under or by virtue of a policy of assurance, by permitting the bank or solicitor to have the custody of, and to produce, the policy of assurance with a receipt signed by the trustee, and a trustee shall not be chargeable with a breach of trust by reason only of his having made or concurred in making any such appointment.

(4) Nothing in this section shall exempt a trustee from any liability which he would have incurred if this Chapter had not been passed, in case he permits any such money, valuable consideration, or property to remain in the hands or under the control of the bank or solicitor for a period longer than is reasonably necessary to enable the bank or solicitor (as the case may be) to pay or transfer the same to the trustee.

(5.) This section applies only where the money or valuable consideration or property is received after the coming into force of this Chapter.

(6.) Nothing in this section shall authorize a trustee to do anything which he is in express terms forbidden to do, or to omit anything which he is in express terms directed to do, by the instrument creating the trust. E. 56 and 57 Vic., c. 53, s. 17; 44 and 45 Vic., c. 41, s. 56.

19. Power to insure building.—(1). A trustee may insure against loss or damage by fire any building or other insurable property to any amount (including the amount of any insurance already on foot), not exceeding three equal fourth parts of the full value of such building or property, and to pay the premiums for such insurance out of the income thereof, or out of the income of any other property subject to the same trusts, without obtaining the consent of any person who is entitled wholly or partly to such income.

(2.) This section does not apply to any building or property which a trustee is bound forthwith to convey absolutely to any beneficiary upon being requested so to do.

(3.) This section applies to trusts created either before or after the coming into force of this Chapter, but nothing in this section contained shall authorize any trustee to do anything which he is in express terms forbidden to do, or to omit to do anything which he is in express terms directed to do, by the instrument creating the trust. 1889, c. 18, s. 16.

20. Power of trustee to give receipts.—(1.) The receipt in writing of any trustee for any money, securities, or other personal property or effects payable, transferable, or deliverable to him under any trust or power, shall be a sufficient discharge for the same, and shall effectually exonerate the person paying, transferring, or delivering the same from seeing to the application or being answerable for any loss or misapplication thereof.

(2.) This section applies to trusts created either before or after the coming into force of this Chapter. 1888, c. 11, s. 87.

21. Power of executors and trustees to compound, &c.—

(1.) An executor or administrator may pay or allow any debt or claim on any evidence that he thinks sufficient.

(2.) An executor or administrator, or two or more trustees acting together, or a sole acting trustee where by the instrument (if any) creating the trust a sole trustee is authorized to execute the trusts and powers thereof, may, if and as he or they think fit, accept any composition or any security, real or personal, for any debt or for any property, real or personal, claimed, and may allow any time for payment for any debt, and may compromise, compound, abandon, submit to arbitration, or otherwise settle any debt, account, claim, or thing whatever relating to the testator's or intestate's estate, or to the trust, and for any of those purposes may enter into, give, execute, and do such agreements, instruments of composition or arrangement, releases, and other things as to him or them seem expedient, without being responsible for any loss occasioned by any act or thing so done by him or them in good faith.

(3.) This section applies only if and so far as a contrary intention is not expressed in the instrument (if any) creating the trust, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4.) This section applies to executorships, administratorships and trusts constituted or created either before or after the coming into force of this Chapter. 1888, c. 11, s. 68.

22. Survivor of two trustees may act, unless contrary is expressed.—

(1.) Where a power or trust is given to or vested in two or more trustees jointly, then, unless the contrary is expressed in the instrument (if any) creating the power or trust, the same may be exercised or performed by the survivor or survivors of them for the time being.

(2.) This section applies only to trusts constituted after or created by instruments coming into operation after the sixteenth day of April, A. D., 1888. 1888, c. 11, s. 61; 1889, c. 18, s. 18.

23. Exoneration of trustees in respect to certain powers of attorney.—

A trustee acting or paying money in good faith under or in pursuance of any power of attorney shall not be liable for any such act or payment by reason of the fact that at the time of the payment or act the person who gave the power of attorney was dead, or had done some act to avoid the power, if this fact was not known to the trustee at the time of his so acting or paying. Provided that nothing in this section shall affect the right of any person entitled to the money against the person to whom the payment is made, and that the person so entitled shall have the same remedy against the person to whom the payment is made as he would have had against the trustee. 1888, c. 11, s. 62.

24. Implied indemnity of trustees.—

A trustee shall without prejudice to the provisions of the instrument (if any) creating the trust, be chargeable only for money and securities actually received by him, notwithstanding his signing any receipt for the sake of conformity, and shall be answerable and accountable only for his own acts, receipts, neglects, or defaults, and not for those of any other trustee, nor for any bank, bankers, broker or other person with whom any trust moneys or securities are deposited, nor for the insufficiency or deficiency of any securities, nor for any other loss, unless the same happens through his own wilful default; and may reimburse himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of his trusts or powers. 1889, c. 18, s. 9.

25. Property held in trust for infant, income of may be applied to maintenance, &c.—

(1.) Where any property is held by a trustee in trust for an infant, either for life or for any greater interest, and whether absolutely or contingently on his attaining the age of twenty-one years, or any other age, or on the occurrence of any event before his attaining such age, the trustee may at his sole discretion pay to the infant's parent or guardian (if any) or otherwise apply for or towards the infant's maintenance, education or benefit, the income of that property, or any part thereof, whether there is any other fund applicable to the same purpose, or any person bound by law to provide for the infant's maintenance or education or not.

(2.) The trustee shall accumulate all the residue of that income in the way of compound interest, by investing the same and the resulting income thereof from time to time on securities on which he is by the instrument (if any) creating the trust, or by law, au-

thorized to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which the same arise: Provided that the trustee may at any time, if he thinks fit, apply those accumulations, or any part thereof, as if the same were income arising in the then current year.

(3.) This section applies only if and so far as a contrary intention is not expressed in the instrument, under which the interest of the infant arises, and shall have effect subject to the terms of that instrument, and to the provisions therein contained.

(4.) This section applies whether the instrument comes into operation before or after the coming into force of this Chapter. 1888, c. 11, ss. 59, 60; E. 44 and 45 Vic., c. 41, s. 43.

PART III.

POWERS OF THE COURT.

1.—Appointment of New Trustees and Vesting Orders.

26. Power of the court to appoint new trustees.—(1.) The court or a judge may, whenever it is expedient to appoint a new trustee or new trustees, and it is found inexpedient, difficult or impracticable so to do without the assistance of the court, make an order for the appointment of a new trustee or new trustees, either in substitution for or in addition to any existing trustee or trustees, or although there is no existing trustee, or although no trustee was appointed in a will containing provisions rendering a trustee necessary to carry them into effect. In particular and without prejudice to the generality of the foregoing provision the court or judge may make an order for the appointment of a new trustee in substitution for a trustee who,—

(a) has been convicted of an offence punishable by imprisonment in the penitentiary; or

(b) is insolvent.

(2.) **Security may be required.**—In making such appointment such terms as to security for the due execution of the trust as are deemed necessary may be imposed.

(3.) **Order not to operate as a discharge of former or continuing trustee to any greater extent than if made out of court.**—An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former or continuing trustee than an appointment of new trustees under any power for that purpose contained in any instrument would have operated. 1888, c. 11, ss. 26, 36, 37, 38, 39 part, 43, 46.

27. Vesting orders as to land.—In any of the following cases, namely:—

(i) Where the court or a judge appoints or has appointed a new trustee; and

(ii) Where a trustee entitled to or possessed of any land, or entitled to a contingent right therein, either solely or jointly with any other person,—

(a) is a lunatic or person of unsound mind, or

(b) is an infant, or

(c) is out of the jurisdiction of the court, or

(d) cannot be found; and

(iii) Where it is uncertain who was the survivor of two or more trustees jointly entitled to or possessed of any land; and

(iv) Where, as to the last trustee known to have been entitled,

to or possessed of any land, it is uncertain whether he is living or dead; and

(v) Where there is no heir or personal representative to a trustee who was entitled to or possessed of land and has died intestate as to that land, or where it is uncertain who is the heir or personal representative or devisee of a trustee who was entitled to or possessed of land and is dead; and

(vi) Where a trustee jointly or solely entitled to or possessed of any land, or entitled to a contingent right therein, has been required, by or on behalf of a person entitled to require a conveyance of the land or a release of the right to convey the land or to release the right, and has wilfully refused or neglected to convey the land or release the right for twenty-eight days after the date of the requirement;

the court or a judge may make an order (in this Chapter called a vesting order) vesting the land in any such person in any such manner and for any such estate as the court or a judge may direct, or releasing or disposing of the contingent right to such person as the court or a judge may direct. Provided that,—

(a) Where the order is consequential on the appointment of a new trustee the land shall be vested for such estate as the court or a judge may direct in the persons who on the appointment are the trustees; and

(b) Where the order relates to a trustee entitled jointly with another person, and such trustee is out of the jurisdiction of the court or cannot be found, the land or right shall be vested in such other person, either alone or with some other person. 1888, c. 11, ss. 4, 5, 8, 9, 11, 12, 13, 14, 16, 17, 18, 19, 21, 26, part 40, 42.

28. Orders as contingent rights of unborn persons.—When any land is subject to a contingent right in an unborn person or class of unborn persons who on coming into existence would in respect thereof become entitled to or possessed of such land on any trust, the court or a judge may make an order releasing such land from such contingent right, or may make an order vesting in any person the estate to or of which such unborn person or class of unborn persons would upon coming into existence be entitled or possessed in such land. 1888, c. 11, s. 16.

29. Vesting order in place of conveyance by infant mortgagee.—Where any person entitled to or possessed of land or entitled to a contingent right in land by way of security for money, is an infant, the court or a judge may make an order vesting or releasing or disposing of the land or right in like manner as in the case of an infant trustee. E. 56 and 57 Vic., c. 53, s. 28.

30. Vesting order in place of conveyance by heir or devisee of heir, &c., or personal representative of mortgagee.—Where a mortgagee of land has died without having entered into the possession or into the receipt of the rents and profits thereof, and the money due in respect to the mortgage has been paid to a person entitled to receive the same, or that last mentioned person consents to any order for the reconveyance of the land, then the court or a judge may make an order vesting the land in such person or persons in such manner and for such estate as the court or judge directs, in any of the following cases namely:—

(a) Where an heir or personal representative or devisee of the mortgagee is out of the jurisdiction of the court, or cannot be found; and

(b) Where an heir or personal representative or devisee of the mortgagee on demand made by or on behalf of a person entitled to

require a conveyance of the land has stated in writing that he will not convey the same or does not convey the same for the space of twenty-eight days next after a proper deed for conveying the land has been tendered to him by or on behalf of the person so entitled; and

(c) Where it is uncertain which of several devisees of the mortgagee was the survivor; and

(d) Where it is uncertain as to the survivor of several devisees of the mortgagee, or as to the heir or personal representative of the mortgagee, whether he is living or dead; and

(e) Where there is no heir or personal representative to a mortgagee who has died intestate as to the land, or where the mortgagee has died and it is uncertain who is his heir or personal representative or devisee. E. 56 and 57 Vic., c. 53, s. 29.

31. Vesting order consequential on judgment for sale or mortgage of land.—Where any court or judge gives a judgment or makes an order directing the sale or mortgage of any land, every person who is entitled to or possessed of the land, or entitled to a contingent right therein as heir, or order under the will of a deceased person for payment of whose debts the judgment was given or order made, and is a party to the action or proceeding in which the judgment or order is given or made, or is otherwise bound by the judgment or order, shall be deemed to be so entitled or possessed, as the case may be, as a trustee within the meaning of this Chapter; and the court or judge may, if it is deemed expedient, make an order vesting the land or any part thereof for such estate as that court or judge thinks fit in the purchaser or mortgagee or in any other person. 1888, c. 11, ss. 31, 33.

32. Vesting order consequential on judgment for specific performance, &c.—Where a judgment is given for the specific performance of a contract concerning any land, or for the partition, or sale in lieu of partition, or exchange, of any land, or generally where any judgment is given for the conveyance of any land either in cases arising out of the doctrine of election or otherwise, the court or judge may declare that any of the parties to the action are trustees of the land or any part thereof within the meaning of this Chapter, or may declare that the interests of unborn persons who might claim under any party to the action, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transactions concerning which the judgment is given are the interests of persons who on coming into existence would be trustees within the meaning of this Chapter, and thereupon the court or judge may make a vesting order relating to the rights of those persons, born and unborn, as if they had been trustees. 1888, c. 11, s. 32.

33. Effect of vesting order.—A vesting order under any of the foregoing provisions shall, in the case of a vesting order consequential on the appointment of a new trustee, have the same effect as if the persons who before the appointment were the trustees (if any) had duly executed all proper conveyances of the land for such estate as the court or judge directs, or if there is no such person, or no such person of full capacity, then as if such person had existed and been of full capacity, and had duly executed all proper conveyances of the land for such estate as the court or judge directs, and shall in every other case have the same effect as if the trustee or other person or description or class of persons to whose rights or supposed rights the said provisions respectively relate had been an ascertained and existing person of full capacity, and had execut-

ed a conveyance or release to the effect intended by the order. 1888, c. 11, 35 part, 40 part.

34. Instead of vesting order person to convey may be appointed.—In all cases where a vesting order can be made under any of the foregoing provisions the court or judge may, if it is more convenient, appoint a person to convey the land, or release the contingent right, and a conveyance or release by that person in conformity with the order shall have the same effect as an order under the appropriate provision. 1888, c. 11, s. 27, part.

35. Vesting order as to stock and choses in action.—In any of the following cases, namely:—

(i) Where the court or judge appoints or has appointed a new trustee; and

(ii) Where a trustee entitled alone or jointly with another person to stock or to a chose in action,—

(a) is a lunatic or person of unsound mind; or

(b) is an infant; or

(c) is out of the jurisdiction of the court; or

(d) cannot be found; or

(e) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action, according to the direction of the person absolutely entitled thereto, for twenty-eight days next after a request in writing has been made to him by the person so entitled; or

(f) neglects or refuses to transfer stock or receive the dividends or income thereof, or to sue for or recover a chose in action for twenty eight days next after an order of the court or judge for that purpose has been served on him; or

(iii) Where it is uncertain whether a trustee entitled alone or jointly with another person to stock or to a chose in action is alive or dead,

the court or judge may make an order vesting the right to transfer or call for a transfer of stock, or to receive the dividends or income thereof, or to sue for or recover a chose in action, in any such person as the court appoints:

Provided that,—

(a) where the order is consequential on the appointment by the court or judge of a new trustee, the right shall be vested in the persons who, on the appointment, are the trustees; and

(b) where the person whose right is dealt with by the order was entitled jointly with another person, the right shall be vested in that last mentioned person, either alone or jointly with any other person whom the court or judge appoints.

(2.) In all cases where a vesting order can be made under this section, the court or judge may, if it is more convenient, appoint some proper person to make or join in making the transfer.

(3.) The person in whom the right to transfer or call for the transfer of any stock is vested by an order of the court or judge under this Chapter, may transfer the stock to himself or any other person, according to the order, and all banks and other companies shall obey every order under this section according to its tenor.

(4.) After notice in writing of an order under this section it shall not be lawful for any bank or other company to transfer any stock to which the order relates, or to pay any dividends thereon, except in accordance with the order.

(5.) The court or judge may make declarations and give directions concerning the manner in which the right to any stock or

chose in action vested under the provisions of this Chapter is to be exercised.

(C). The provisions of this Chapter as to vesting orders shall apply to shares in ships registered under the Acts relating to merchant shipping as if they were stock. 1888, c. 11, ss. 6, 7, 10, 15, 20, 22, 23, 24, 25, 26 part, 27 part, 28, 30, 34, 41, 42.

36. Persons entitled to apply for orders.—(1.) An order under this Chapter for the appointment of a new trustee or concerning any land, stock or chose in action subject to a trust, may be made on the application of any person beneficially interested in the land, stock or chose in action, whether under disability or not, or on the application of any person duly appointed trustee thereof.

(2.) An order under this Chapter concerning any land, stock or chose in action subject to a mortgage may be made on the application of any person beneficially interested in the equity of redemption, whether under disability or not, or of any person interested in the money secured by the mortgage. 1888, c. 11, s. 47.

37. Powers of new trustee appointed by court.—Every trustee appointed by a court of competent jurisdiction shall, as well before as after the trust property becomes by law or by assurance or otherwise vested in him, have the same powers, authorities, and discretions, and may in all respects act, as if he had been originally appointed a trustee by the instrument (if any) creating the trust. 1888, c. 11, ss. 28, 29 part, 39 part; 1889, c. 18, s. 19.

38. Power to charge costs on trust estate.—The court or judge may order the costs and expenses of and incident to any application for an order appointing a new trustee, or for a vesting order, or of and incident to any such order, or any conveyance or transfer in pursuance thereof, to be paid or raised out of the land or personal property in respect whereof the same is made, or out of the income thereof, or to be borne and paid in such manner and by such persons as to the court or judge seems just. 1888, c. 11, s. 92.

39. Charities, vesting orders in case of.—The powers conferred by this Chapter as to vesting orders may be exercised for vesting any land, stock or chose in action in any trustee of a charity or society over which the court would have jurisdiction upon action duly instituted, whether the appointment of the trustee was made by instrument under a power, or under the provisions of a statute, or by the court or a judge under its general or statutory jurisdiction. 1888, c. 11, s. 83.

40. Orders made upon certain allegations to be conclusive evidence.—Where a vesting order is made as to any land under this Chapter founded on an allegation of the personal incapacity of a trustee or mortgagee, or on an allegation that a trustee or the heir or personal representative or devisee of a mortgagee is out of the jurisdiction of the court or cannot be found, or that it is uncertain which of several trustees or which of several devisees of a mortgagee was the survivor, or whether the last trustee or the heir or personal representative or last surviving devisee of a mortgagee is living or dead, or on an allegation that any trustee or mortgagee has died intestate without an heir, or has died and it is not known who is his heir or personal representative or devisee, the fact that the order has been so made shall be conclusive evidence of the matter so alleged in any court upon any question as to the validity of the order; but this

section shall not prevent the court or a judge from directing a reconveyance on the payment of costs occasioned by any such order if improperly obtained. 1888, c. 11, s. 82.

2.—Payment into Court by Trustees and Others.

41. Payment into court by trustees.—(1.) Trustees, or the majority of trustees, having in their hands or under their control money or securities belonging to a trust, may pay the same into the court; and the same shall, subject to rules of court, be dealt with according to the orders of the court.

(2.) The receipt or certificate of the proper officer shall be a sufficient discharge to trustees for the money or securities so paid into court.

(3.) Where any moneys or securities are vested in any persons as trustees, and the majority are desirous of paying the same into court, but the concurrence of the other or others cannot be obtained, the court or judge may order the payment into court to be made by the majority without the concurrence of the other or others; and where any such moneys or securities are deposited with any bank, broker, or other depositary, the court or judge may order payment or delivery of the moneys or securities to the majority of the trustees for the purpose of payment into court, and every transfer, payment and delivery made in pursuance of any such order shall be valid and take effect as if the same had been made on the authority or by the act of all the persons entitled to the moneys and securities so transferred, paid, or delivered. 1888, c. 11, s. 67.

42. Infant or person of unsound mind, money payable to in discharge of land, stock or security may be paid into court.—Where any infant or person of unsound mind is entitled to any money payable in discharge of any land, stock or other security, or chose in action conveyed, assigned or transferred under this Chapter, the person by whom such money is payable may pay the same into the Supreme Court or to such person as the court or a judge orders, in trust in any cause then depending concerning such money, or if there is no such cause, to the credit of such infant or person of unsound mind, subject to the order or disposition of the court or a Judge; and the court or a judge may, in a summary way, order any money so paid to be invested in such stock or securities as such court or judge selects or approves, and may order payment or distribution thereof, or payment of the dividends thereof, as to such court or judge seems reasonable; and the accountant-general or other person who receives any such money shall give to the person paying the same a receipt for such money, and any such receipt shall be an effectual discharge for the money therein expressed to have been received. 1888, c. 11, s. 86.

3.—Miscellaneous.

43. Power to give judgment in absence of trustee.—Where in any action the court or judge is satisfied that diligent search has been made for any person who, in the character of trustee, is made a defendant in any action, to serve him with a process of the court, and that he cannot be found, the court or judge may hear and determine the action and give judgment therein against that person in his character of a trustee, as if he had been duly served, or had entered an appearance in the action, and had also appeared by his

counsel, and solicitor at the hearing, but without prejudice to any interest he may have in the matters in question in the action in any other character. 1888, c. 11, s. 71.

44. Power to make beneficiary indemnity for breach of trust.—(1.) Where a trustee commits a breach of trust at the instigation or request or with the consent in writing, of a beneficiary, the court or judge may if it or he thinks fit, and notwithstanding that the beneficiary is a married woman entitled for her separate use and restrained from anticipation, make such order as to the court or judge seems just for impounding all or any part of the interest of the beneficiary in the trust estate, by way of indemnity to the trustee or person claiming through him.

(2.) This section shall apply to breaches of trust committed as well before as after the coming into force of this Chapter. 1889, c. 18, s. 15.

45. Trustees, guardians, &c., may by leave of court mortgage for repairs, &c.—(1.) Trustees, guardians, and others standing in a fiduciary relation, may, under an order obtained from the court or judge, upon grounds laid to the satisfaction of the court or judge, mortgage real property or portions thereof for the purpose of putting, keeping and maintaining the same in proper repair, and mortgages so made shall operate as securities to the holders in the same way and to the same extent as if made by the persons whose interests are represented by the mortgagors.

(2.) The court or judge may apportion the charge for repairs, including interest on the sum borrowed, to and among the persons interested in the property as is just and equitable. 1888, c. 11, s. 57.

PART IV.

Miscellaneous and Supplementary.

46. Chapter to be an indemnity to banks and others.—This Chapter and every order purporting to be made under this Chapter shall be a complete indemnity to all companies and to all persons for any acts done pursuant thereto; and it shall not be necessary for any company or person to inquire concerning the propriety of the order, or whether the court or judge making the same had jurisdiction to make it. 1888, c. 11, s. 79.

47. Personal property may be assigned by grantor to himself and another.—Any person may assign personal property by law assignable, including chattels real, directly to himself and another person or persons or corporation, by the like means as he may assign the same to another person. 1888, c. 11, s. 91.

48. Payment of purchase or mortgage money payable on a trust to person, &c., exonerates person paying from seeing to application, &c.—The *bona fide* payment to and the receipt by any person to whom any purchase or mortgage money is payable, upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary is expressly declared by the instrument creating the trust of security. 1888, c. 11, s. 81.

49. After notice to persons entitled, distribution of assets by executor, &c., exonerates from liability for assets distributed.—Where an executor or administrator has given such or

the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would be sufficient in the Supreme Court in an administration action, or in a court of probate, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator did not have notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in this section contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who have received the same respectively. 1888, c. 11, s. 65.

50. Person entitled to rents and income of land and personal property notwithstanding incumbrances.—For the purposes of this Chapter a person is deemed to be entitled to the possession or to the receipt of the rents and income of land or personal property, although his estate may be charged or encumbered, either by himself or by any former owner, or otherwise howsoever, to any extent; but the estates or interests of the persons entitled to any such charge or encumbrance shall not be affected by the acts of the person entitled to the possession or to the receipt of the rents or income as aforesaid unless they concur therein. 1888, c. 11, s. 80.

51. Money to stand in place of land converted into money in consequence of expropriation for railways.—Where land subject to a trust has been converted into money by the operation of any law relating to railways, such money shall be considered as land for the purposes of this Chapter, and shall be dealt with as nearly as may be in conformity with the provisions thereof. 1888, c. 11, s. 90.

52. Nothing in Chapter to impair powers of court of probate.—Nothing in this Chapter shall be construed to interfere with or impair the powers at present vested in the several courts of probate, further than is herein expressly mentioned. 1888, c. 11, s. 93.

53. Vesting orders or instrument, &c., to be registered.—As to persons not having actual notice of any order, deed or other instrument affecting the title to land, made under the provisions of this Chapter, such order, deed or other instrument shall be binding only from the time the same is registered in the registry of deeds for the registration district in which the land lies under the provisions of "The Registry Act." 1888, c. 11, s. 94.

54. Rules of court may be made as to procedure under this Chapter.—The Supreme Court may make rules not inconsistent with this Chapter, nor with the laws for the time being in force in Nova Scotia, for the better and more effectual carrying out of the purposes of this Chapter, and for defining and declaring the procedure in cases arising under it. 1888, c. 11, s. 95; 1889, c. 18, s. 21.

55. Remuneration of trustees.—(1.) Trustees or guardians shall be entitled to such fair and reasonable remuneration for their care, pains and trouble, and their time expended in and about the estate, and in such proportions where there is more than one trustee, as is determined by the court or judge, or by any master or referee to whom the matter is referred.

(2.) **May be fixed by a judge.**—A judge of the supreme court may, on application to him for the purpose, settle the amount and apportionment of such remuneration, although the estate is not before the court in any action or proceeding.

(3.) **Unless fixed by the instrument.**—Nothing in this section shall apply to any case in which the rate of remuneration is fixed by the instrument creating the trust. 1888, c. 11, s. 69.

56. Co-trustee solicitor may act as solicitor, but not to make charge for any service which he ought to perform as trustee.—Where there are more executors, administrators, trustees or guardians than one, any one of such executors, administrators, trustees or guardians who is also a solicitor may, with the consent of his co-executors, co-administrators, co-trustees, or co-guardians, charge for professional services rendered by him in relation to the estate in the same manner as if he were not such executor, administrator, trustee, or guardian: Provided, however, that no such charge shall be made for any service which an executor, administrator, trustee or guardian ought to render without the intervention of a solicitor. 1888, c. 11, s. 70.

R. S. N. S., 1900, CHAP. 152.

OF INVESTMENT OF TRUST FUNDS IN CERTAIN LOAN COMPANIES.

1. Power to trustee, etc., to invest in loan company.—(1.) Any trustee, executor or administrator, if not by the instrument creating his trust expressly forbidden to do so may invest any trust funds in the debentures of the loan company incorporated by Chapter 113 of the Acts of the Dominion of Canada for the year 1887 and of any other Loan Company incorporated by an Act of the Parliament of the Dominion of Canada whose borrowing powers and powers and limitations of investment of its capital and funds are the same as those prescribed by the said Chapter 113, or by any Acts in amendment thereof, and having its head office in Halifax, Nova Scotia, and authorized to do business in Nova Scotia and having a paid-up capital of at least \$100,000.

(2.) Such trustee, executor or administrator shall not on account of such investment be liable as for a breach of trust, provided that such loan company, if incorporated after the passing of the said Chapter 113, has obtained the sanction of the Governor-in-Council to the effect that it is a safe company in the debentures of which such trust funds may be properly invested, and that such investment was in other respects reasonable and proper. 1892, c. 52, s. 1; 1900, c. 30, ss. 1.

2. Company to transmit yearly statement.—(1.) Every such company shall, on or before the first day of March in each year, transmit to the Provincial Secretary a full and clear statement of the company's assets and liabilities on some day to be stated therein, which day shall not be more than twelve months prior to the said first day of March, or earlier than the end of the last preceding financial year of such company.

(2.) Such statement shall contain the following particulars:

- (a) The amount of stock subscribed;
- (b) The amount paid in upon such stock;
- (c) The amount borrowed for the purposes of investment, and the securities given therefor;
- (d) The amount invested and secured by mortgages;
- (e) The amount of mortgages payable by instalments;
- (f) The number and aggregate amount of mortgages upon which compulsory proceedings have been taken during the past year, and also the value of mortgaged property held for sale and the amount chargeable against it;
- (g) The present cash value of the company's investments on mortgages and other securities. 1892, c. 2, s. 2.

3. Statement to be attested.— (1.) Such statement shall be attested by the oath (taken before some justice of the peace or commissioner for taking affidavits in the Supreme Court) of two persons, one being the president, vice-president, manager or secretary, and the other the manager, secretary or auditor of such company, each of whom shall distinctly state that he holds such office, that the statement has been prepared by the proper officers of the company, that the deponent believes that it has been prepared with due care, and that he believes it to be true in every particular.

(2.) For any neglect to transmit such statement in due course of post within five days after the day upon which the same should be transmitted, such company shall be liable to a penalty of ten dollars per day, but not exceeding in the whole four hundred dollars: Provided, always, that such penalty may be remitted by the Provincial Secretary on cause shewn by the company. 1892, c. 52, s. 3.

QUEBEC

CIVIL CODE OF LOWER CANADA.

BOOK III., TITLE II., CHAP. III., SECTION VI.

OF TESTAMENTARY EXECUTORS.

905. A testator may name one or more testamentary executors, or provide for the manner in which they shall be appointed; he may also provide for their successive replacement.

Heirs or legatees may lawfully be appointed testamentary executors.

Creditors of the succession may be executors without forfeiting their claims.

Single women or widows may also be charged with the execution of wills.

The courts and judges cannot appoint nor replace testamentary executors except in the cases specified in article 924.

If there be no testamentary executors, and none have been appointed in the manner in which they may be, the execution of the will devolves entirely upon the heir or the legatee who received the succession. C. N. 1025; C. C. 869, 923.

906. Married women cannot accept testamentary executorship without the consent of their husbands.

Single women and widows who marry while they are testamentary executors do not forfeit their office by mere operation of law, even though they have entered into community of property with their husbands, but they require the consent of the latter to continue the exercise of such office.

A testamentary executrix, separated as to property from her husband, either by contract of marriage or by judgment, may, if he refuse the consent necessary for her to accept or to exercise the office, obtain judicial authorization as in the cases provided for in article 178. C. N. 1029; C. C. 177.

907. Minors cannot act as testamentary executors even with the authorization of their tutors.

Nevertheless emancipated minors may do so, provided the executorships be of small importance in proportion to their means. C. N. 1030; 908.

908. In incapacity of corporations to execute wills is declared in the first book.

Persons who compose a corporation, or such persons and their successors, may be appointed to execute wills in their purely personal capacity, and may act in that behalf if such appear to have been the intention of the testator, although he may have designated them solely by the appellation which belongs to them in their corporate capacity.

The same rule applies to persons designated by the title which belongs to their office or position, and to their successors. C. C. 365.

909. Subject to the preceding provisions, persons who cannot obligate themselves cannot be testamentary executors.—C. N. 1028.

910. No person can be compelled to accept the office of testamentary executor.

Its duties are performed gratuitously, unless the testator has provided for their remuneration.

If a legacy made in favor of a testamentary executor have no other cause than such remuneration, and he do not accept the office, the legacy lapses by reason of the failure of the condition.

If he accept the legacy thus made, he is presumed to have accepted the executorship.

Testamentary executors are not bound to be sworn; nor to give security unless they have accepted with that condition.

They are not liable to coercive imprisonment. C. C. 981o *et s.*; C. C. P. 833, s. 6.

911. A testamentary executor who has accepted the office cannot renounce it without the authorization of the court or of a judge, which may be granted for sufficient cause; the heirs and legatees and other executors, if there be any, being present or having been duly called.

Difference of opinion between an executor and the majority of his co-executors, as to the execution of the will may constitute a sufficient cause.

912. If several testamentary executors have been appointed, and some of them only, or even one of them alone, have accepted, they or he may act alone, unless the testator has otherwise ordained.

In like manner, if several have accepted, but some or one only of them survive, or retain the office, they or he may act alone until the others are replaced. In the cases admitting of it, unless the testator has expressed himself to the contrary.

913. If there be several joint testamentary executors, with the same duties to perform, they have all equal powers and must act together, unless the testator has otherwise ordained.

Nevertheless if any of them be absent, those who are in the place may perform alone acts of a conservatory nature and others requiring dispatch.

The executors may also act generally as attorneys for each other unless the intention of the testator appears to the contrary and subject to the responsibility of the one who grants the power. The executors cannot delegate generally the execution of the will to others than their co-executors, but they may be represented by attorney for determinate acts.

Executors exercising these joint powers, are jointly and severally bound to render one and the same account, unless the testator has divided their functions and each of them has kept within the scope assigned to him.

They are responsible only each for his share for the property of which they took possession in their joint capacity, and for the payment of the balance due, saving the distinct liability of such as are authorized to act separately. C. N. 1033.

914. The expenses incurred by the testamentary executor in the fulfilment of his duties are borne by the succession. C. N. 1034.

915. A testamentary executor may, before the probate of the will, perform acts of a conservatory nature or which require dispatch, provided he obtains such probate without delay, and furnishes proof of it when required.

916. The testator may limit the obligation incumbent upon the executor of making an inventory and rendering an account of his administration, and even free him from it entirely.

This discharge does not release him from the payment of what remains in his hands, unless the testator intended to leave him the disposition of the property without responsibility, or that the terms of the will otherwise import the release from payment.

917. If, having accepted, a testamentary executor refuse or neglect to act, or dissipate or waste the property or otherwise exercise his functions in such a manner as would justify the dismissal of a tutor, or if he have become incapable of fulfilling the duties of his office, he may be removed by the court having jurisdiction.

918. Testamentary executors, for the purposes of the execution of the will, are seized as legal depositaries of the moveable property of the succession, and may claim possession of it even against the heir or legatee.

This seizin lasts for a year and a day reckoning from the death of the testator or from the time when the executor was no longer prevented from taking possession.

When his duties are at an end, the testamentary executor must render an account to the heir or legatee who receives the succession, and pay him over the balance remaining in his hands. C. N. 1026, 1031.

919. The testamentary executor must cause an inventory to be made after notifying the heirs, legatees, and other interested persons to be present. He may, however, perform immediately all acts of a conservatory nature or which require despatch.

He attends to the obsequies of the deceased.

He procures the probate of the will and its registration when necessary.

If the validity of the will be contested he may become a party to support it.

He pays the debts and discharges the particular legacies, with the consent of the heir or of the legatee who receives the succession, or, after calling in such heir or legatee, with the authorization of the court.

In the case of insufficiency of moneys for the execution of the will, he may, with the same consent, or with the same authorization, sell moveable property of the succession to the amount required. The heir or legatee may however prevent such sale by tendering the amount required for the execution of the will.

The testamentary executor may receive the debts due and may sue for their recovery.

He may be sued for whatever falls within the scope of his duties, saving his right to call in the heir or the legatee. C. N. 1031; C. C. 857 *et s.*; C. C. P., 1364, 1387 *et s.*, 1430.

920. The powers of a testamentary executor do not pass by mere operation of law to his heirs or other successors, who are however bound to render an account of his administration, and of whatever they may themselves have actually administered. C. N. 1032.

921. The testator may modify, restrict or extend the powers, the obligations and the seizin of the testamentary executor, and the duration of his functions. He may constitute the testamentary executor, an administrator of his property, in whole or in part, and may even give him the power to alienate it with or without the intervention of the heir or legatee, in the manner and for the purposes determined by himself.

922. A testator cannot appoint tutors to minors nor curators to persons requiring their assistance or to substitutions.

If he have assumed to appoint persons to such offices, the specific powers given to the persons thus named, and which he might have conferred upon them without such designation, may however be exercised by them as executors and administrators of the will.

The testator may oblige the heir or the legatee, in certain cases, to take the advice or to obtain the sanction of the testamentary executors, or of other persons. C. C. 249.

923. The testator may provide for the replacing of testamentary executor's and administrators, even successively and for as long a time as the execution of the will shall last, whether by directly naming and designating those who shall replace them himself, or by giving them power to appoint substitutes, or by indicating some other mode to be followed, not contrary to law. C. C. 905.

924. If the testator desire that the appointment or the replacement should be made by the courts or judges, the powers necessary for such purpose may be exercised judicially, the heirs, and legatees interested being first duly notified.

When testamentary executors and administrators have been named by the will, and, in consequence of their refusal to accept, or of their powers having ceased without their being replaced, or of unforeseen circumstances none of them remain, and it is impossible to replace them under the terms of the will, the judges and the courts may likewise exercise the powers necessary to do so, provided it appears that the testator intended the execution and administration of the will to continue independently of the heir or of the legatee. C. C. 905.

CHAPTER IV. (A.)

Of Trusts.

981a. All persons capable of disposing freely of their property, may convey property, moveable or immoveable, to trustees by gift or by will, for the benefit of any persons in whose favor they can validly make gifts or legacies. R. S. Q. 5803; C. C. 869, 964.

981b. Trustees, for the purposes of their trust, are seized as depositaries and administrators for the benefit of the donees or legatees of the property, moveable or immoveable, conveyed to them in trust, and may claim possession of it, even against the donees or legatees for whose benefit the trust was created.

This seizin lasts only for the time stipulated for the duration of the trust; and while it lasts, the trustees may sue and be sued and take all judicial proceedings for the affairs of the trust. *Id.*

981c. The donor or testator creating the trust may provide for the replacing of trustees as long as the trust lasts, in case of refusal to accept, of death, or other cause of vacancy, and indicate the mode to be followed.

When it is impossible to replace them under the terms of the document creating the trust or when the replacement is not provided for, any judge of the superior court may appoint replacing trustees, after notice to the benefited parties. *Id.*

981d. Trustees dissipating or wasting the property of the trust, or refusing or neglecting to carry out the provisions of the document creating the trust, or infringing their duties, may be removed by the Superior Court. *Id.*

981e. The powers of a trustee do not pass to his heirs or other successors, but the latter are bound to render an account of his administration. *Id.*

981f. When there are several trustees, the majority may act, unless it be otherwise provided in the document creating the trust.

981g. Trustees act gratuitously, unless it be otherwise provided in the document creating the trust. All expenses incurred by trustees in the fulfillment of their duties, are borne by the trust. *Id.*

981h. Trustees are obliged to execute the trust which they have accepted, unless they be authorized by a judge of the superior court to renounce; and they are liable for damages resulting from their neglect to execute it when not so authorized. *Id.*

981i. Trustees are not personally liable to third parties with whom they contract. *Id.*

981j. The trustees, without the intervention of the parties benefited, administer the property vested in them and dispose of it, invest moneys which are not payable to the parties benefited, and alter, vary and transpose, from time to time, the investments, in accordance with the provisions and terms of the document creating the trust.

In default of instructions, the trustees make investments without the intervention of the parties benefited, in accordance with the provisions of article 981o. *Id.*

981k. Trustees are bound to exercise, in administering the trust, reasonable skill and the care of prudent administrators; but they are not liable for depreciation or loss in investments made according to the provisions of the document creating the trust, or of the law, or for loss on deposits made on chartered banks or savings banks unless there has been bad faith on their part in making such investments or deposits. *Id.*; C. C. 981 p., 981 q.; C. C. P. 833. s. 6.

981l. At the termination of the trust the trustees must render an account, and deliver over all moneys and securities in their hands, to the parties entitled thereto under the provisions of the document creating the trust, or entitled thereto by law.

They must also execute all transfers, conveyances, or other deeds necessary to vest the property held for the trust in the parties entitled thereto. *Id.*

981m. Trustees are jointly and severally bound to render one and the same account unless the donor or testator who created the trust has divided their functions, and each has kept within the scope assigned to him.

They are also jointly and severally responsible for the property vested in them, in their joint capacity, and for the payment of any balance in hand, or for any waste or for any loss arising from wrongful investments, saving where they are authorized to act separately, in which cases those having acted separately within the scope assigned to them are alone liable for such separate administration. *Id.*

981n. Trustees are liable to coercive imprisonment for whatever is due by reason of their administration, to those to whom they are accountable, subject to the provisions contained in the Code of Civil Procedure. *Id.*; C. C. P. 833, s. 1.

CHAPTER IV. (B.)

Of the Investment of Moneys Belonging to Other Persons.

981o. Except to the case of testamentary executors otherwise authorized by the will, in that of institutes under a substitution otherwise authorized by the instrument creating the substitution, and in that of trustees otherwise authorized by the instrument constituting such trust, every institute in whatever degree under a substitution, howsoever created, and every executor under any will, and every tutor, curator or trustee having as such the possession or administration of property belonging to another, or held by him for the benefit of another bound by law to invest money held by him as such administrator, must invest moneys held by them as such in Dominion or Provincial stock or in public securities of the United Kingdom or of the United States of America, or in municipal stock or debentures or in the bonds or debentures of any school corporation in any city or town of this province or in real estate in this province, or on first privilege or hypothec upon real estate in this province, to an amount not exceeding three fifths of the municipal valuation of such real estate. *Id.* (Amended 1907, c. 54, s. 1.)

981p. The institute, executor, administrator, tutor, curator or trustee making investments in accordance with the preceding article, is exempt from all responsibility respecting the investments so made, saving always in the case of fraud, which renders these persons responsible for the damages occasioned by their fraud, under pain of coercive imprisonment, subject to the provisions contained in the Code of Civil Procedure. C. C. P. 833, s. 6.

981q. The institute, executor, administrator, tutor, curator and trustee, when investments are made otherwise than as provided in article 981o or than as ordered by the will appointing the executors or administrators, or by the document creating the substitution or trust, are obliged to indemnify the parties to whom they are accountable for losses caused by the depreciation of the securities invested in, under pain of coercive imprisonment, subject to the provisions contained in the Code of Civil Procedure. *Id.* C. C. P. 833, s. 6.

981r. Whenever the terms of the instrument give such persons the power to invest moneys, and a full or restricted discretion as to the nature or manner of such investment, they are held to have the like power and discretion to change from time to time any such investment they may have made, by selling the property in which they had invested, and reinvesting the proceeds as they might originally have done. *Id.*

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BRITISH COLUMBIA

R. S. B. C., 1897, CHAP. 193.

An Act for the Consolidation and Amendment of the Laws with respect to Wills.

z Her Majesty, by and with the advice and consent of the Legislative, Assembly of the Province of British Columbia, enacts as follows:—

SHORT TITLE.

1. Short title.—This Act may be cited as the “Wills Act.”

2. Interpretation.—The words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say:—

“**Will.**”—The word “Will” shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, and to any other testamentary disposition; and

“**Real estate.**”—The words “real estate” shall extend to manors, advowsons, messuages, lands, tithes, rents and hereditaments, whether freehold, customary freehold, tenant right, customary, or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and

“**Personal estate.**”—The words “personal estate” shall extend to leasehold estates and other chattels real, and also to moneys, shares of Government and other funds, securities for money (not being real estates) debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein. 7 Will. 4 and 1 Vict., c. 26, s. 1.

3. All property may be disposed of by will.—It shall be lawful for every person to devise, bequeath or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir at law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator;

Real estate, customary freehold, and tenant right.—And the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devise, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or sur-

render to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made;

Estates "*pur autre vie*".—And also to estates "*pur autre vie*", whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament;

Contingent and executory interests.—And also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created or under any disposition thereof by deed or will;

Rights of entry.—And also to all rights of entry for conditions broken, and other rights of entry;

Property acquired subsequently to execution of will.—And also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. 7 Will. 4 and 1 Vict., (Imp.), c. 26, s. 3.

4. Estates "*pur autre vie*".—If no disposition by will shall be made of any estate *pur autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple;

And in case there shall be no special occupant of any estate *pur autre vie*, whether freehold or customary freehold, tenant right, customary, or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant;

And if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 6.

5. No will of a person under age valid.—No will made by any person under the age of twenty-one years shall be valid. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 7.

6. Every will shall be in writing and signed by testator in presence of two witnesses at one time.—No will shall be valid unless it shall be in writing and executed in manner herein-after mentioned, that is to say:

It shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary. 7 Will. 4, and 1 Vict. (Imp.), c. 26, s. 9 (as amended by 2 Edw. VII., c. 73, s. 2).

7. When signature to a will shall be deemed valid.—

Every will shall, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, be deemed to be valid within the meaning of this Act, as explained by this Act, if the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will;

And no such will shall be affected by the circumstance that the signature shall not follow or be immediately after the foot or end of the will, or by the circumstance that a blank space shall intervene between the concluding word of the will and the signature, or by the circumstance that the signature shall be placed among the words of the testimonium clause or of the clause of attestation, or shall follow or be after or under or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature shall be on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will shall be written above the signature, or by the circumstance that there shall appear to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment:

But no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made. 15 and 16 Vict. (Imp.), c. 24, s. 1.

8. Appointments by will to be executed like other wills.—

And to be valid although other required solemnities are not observed.—No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required;

And every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 10.

9. Soldiers' and mariners' wills excepted.—Provided always that any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the marking of this Act. 7 Will. 4 and 1 Vict. (Imp.), c. 26, 11.

10. Will to be valid without publication.—Every will executed in manner hereinbefore required shall be valid without any other publication thereof. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 13.

11. Will not to be void on account of incompetency of attesting witness.—If any person who shall attest the execution of a will shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 14.

12. Gift to an attesting witness to be void.—If any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void;

And such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 15.

13. Creditor attesting to be admitted a witness.—In case by will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 16.

14. Executor to be admitted a witness.—No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 17.

15. Will to be revoked by marriage.—Every will made by a man or woman shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, customary heir, executor, or administrator, or the person entitled as his or her next of kin, under the Statute of Distributions). 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 18.

16. No will to be revoked by presumption.—No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 19.

17. No will to be revoked but by another will or codicil, or by a writing executed like a will or by destruction.—No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 20.

18. No alteration in a will shall have any effect unless executed as a will.—No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such execu-

tion shall be executed in like manner as hereinbefore is required for the execution of the will;

But the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or on some other part of the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 21.

19. No will revoked to be revived otherwise than by re-execution or a codicil to revive it.—No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same;

And when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 22.

20. A devise not to be rendered inoperative by any subsequent conveyance or act.—No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 23.

21. A will shall be construed to speak from the death of the testator.—Every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 24.

22. A residuary devise shall include estates comprised in lapsed and void devises.—Unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 25.

23. A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.—A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary in-

tention shall appear by the will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 26.

24. A general gift shall include estates over which the testator has a general power of appointment.—A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will:

And in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 27.

25. A devise without any words of limitation to pass the fee.—Where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose by will in such real estate, unless a contrary intention shall appear by the will. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 28.

26. The words "die without issue," or "die without leaving issue," shall be construed to mean "die without issue living at the death."—In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise:

Provided that this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 29.

27. No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.—Where any real estate (other than or not being a presentation to a church) shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate unless a definite term of years, absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 30.

28. Trustees under unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life, to take the fee.—Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 31.

29. Devises of estates tail shall not lapse.—Where any person to whom any real estate shall be devised for an estate tail or an estate in *quasi* entail shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. 7 Will. 4, and 1 Vict., (Imp.), c. 26, s. 32.

30. Gifts to children or other issue who leave issue living at the testator's death shall not lapse.—Where any person, being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. 7 Will. 4, and 1 Vict., (Imp.), c. 26, s. 33.

31. Act not to extend to wills made before 1838.—This Act shall not extend to any will made before the first day of January, one thousand eight hundred and thirty-eight.

Every will re-executed or re-published, or revived by any codicil, shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed re-published, or revived. 7 Will. 4 and 1 Vict. (Imp.), c. 26, s. 34.

32. Proof of execution of will, codicil, deed, or instrument by declaration of attesting witness.—It shall and may be lawful to and for any attesting witness to the execution of any will or codicil, deed, or instrument in writing, and to and for any other competent person, to verify and prove the signing, sealing, publication or delivery, of any such will, codicil, deed or instrument in writing, by declaration in writing; and every Justice of the Peace, Notary Public, or other officer duly by law empowered in that behalf, shall be and is hereby authorised and empowered to administer or receive such declaration. 5 and 6 Will. 4, c. 62, s. 16.

NORTHWEST TERRITORIES and ALBERTA

R. S. C., 1906 CHAP. 63.

AN ACT RESPECTING THE NORTHWEST TERRITORIES.

(The following sections have been repealed so far as Saskatchewan is concerned).

WILLS.

17. Who may make.—Every person of the full of twenty-one years may devise, bequeath or dispose of by will, executed in manner hereinafter mentioned, all real and personal property to which he is entitled either at law or in equity at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon his heir-at-law, or upon his executor or administrator. R.S., c. 50, ss. 26 and 27.

18. Execution.—No will shall be valid unless it is in writing and signed at the foot or end thereof, by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in the presence of the testator.

(2.) **Attestation.**—No form of attestation shall be necessary and no other publication than as aforesaid shall be required. R.S., c. 50, ss. 28 and 29.

19. Incompetence of witness not to invalidate.—If any person who attests the execution of a will is, at the time of the execution thereof, or at any time afterwards, incompetent to be admitted as a witness to prove the execution thereof, such will shall not, on that account, be invalid. R.S., c. 50, s. 30.

20. Executor may be witness.—No person shall, on account of his being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will, or as a witness to prove the validity or invalidity thereof. R.S., c. 50, s. 31.

21. Devise or bequest to attesting witness void.—Witness may prove execution.—If any person attests the execution of any will, to whom, or to whose wife or husband, any beneficial devise or legacy affecting any real or personal property other than a charge for the payment of a debt is thereby given, such devise or legacy shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, wife or husband, be null and void, and such person so attesting shall be admitted to prove the execution of such will, or the validity or invalidity of such will, notwithstanding such devise or legacy. R.S., c. 50, s. 32.

22. Revocation.—No will or codicil, or any part thereof, shall be revoked otherwise than by,—

- (a) marriage; or,
- (b) another will or codicil executed in manner hereinbefore required; or,
- (c) some writing declaring an intention to revoke the same,

and executed in the manner in which a will is hereinbefore required to be executed; or,

(d) the burning, tearing or otherwise destroying the same, by the testator or by some person in his presence and by his direction, with the intention of revoking the same. R.S., c. 50, s. 33.

23. Construed as if executed immediately before death.—

Every will shall be construed with reference to the real and personal property affected by it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. R.S., c. 50, s. 34.

24. Whole interest in realty to pass unless contrary intention appears.—If any real property is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will, in such real property, unless the contrary intention appears by the will. R.S., c. 50, s. 35.

25. Holograph will.—A holograph will written and signed by the testator himself though not witnessed shall be valid. 4-5 E. VII., c. 27, s. 11.

YUKON TERRITORY

R. S. C., 1906, CHAP. 63.

**AN ACT TO PROVIDE FOR THE GOVERNMENT OF THE
YUKON TERRITORY.****WILLS.**

22. Who may make.—Every person of the full age of twenty-one years may devise, bequeath or dispose of by will, executed in manner hereinafter mentioned, all real and personal property to which he is entitled either at law or in equity at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon his heir-at-law, or upon his executor or administrator. 61 V., c. 6, s. 9.

23. Execution.—No will shall be valid unless it is in writing and signed at the foot or end thereof, by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, who shall attest and subscribe the will in the presence of the testator.

(2.) **Attestation.**—No form of attestation shall be necessary and no other publication than as aforesaid shall be required. 61 V., c. 6, s. 9.

24. Incompetence of witness not to invalidate.—If any person who attests the execution of a will is, at the time of the execution thereof, or at any time afterwards, incompetent to be admitted as a witness to prove the execution thereof, such will shall not, on that account, be invalid. 61 V., c. 6, s. 9.

25. Executor may be witness.—No person shall on account of his being an executor of a will, be incompetent to be admitted as a witness to prove the execution of such will, or as a witness to prove the validity or invalidity thereof. 61 V., c. 6, s. 9.

26. Devise or bequest to attesting witness void.—If any person attests the execution of any will, to whom, or to whose wife or husband, any beneficial devise or legacy affecting any real or personal property other than a charge for the payment of a debt is thereby given, such devise or legacy shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, wife or husband, be null and void, and such person so attesting shall be admitted to prove the execution of such will, or the validity or invalidity of such will, notwithstanding such devise or legacy. 61 V., c. 6, s. 9.

27. Revocation.—No will or codicil, or any part thereof, shall be revoked otherwise than by,—

(a) marriage; or,
(b) another will or codicil executed in manner hereinbefore required; or,

(c) some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed; or,

(d) the burning, tearing or otherwise destroying the same by

the testator or by some person in his presence and by his direction, with the intention of revoking the same. 61 V., c. 6, s. 9.

28. Construed as if executed immediately before death.—

Every will shall be construed with reference to the real and personal property affected by it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. 61 V., c. 6, s. 9.

29. Whole estate in realty to pass unless contrary intention appears.— If any real property is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will, in such real property, unless a contrary intention appears by the will. 61 V., c. 6, s. 9.

SASKATCHEWAN

STATUTES OF SASKATCHEWAN, 1907.

CHAP. 15.

An Act respecting Wills:

Short title s. 1.
 Interpretation s. 2.
 Who may make a will ss. 3-6.
 Form and mode of execution ss. 7-15.
 Revocation and alteration ss. 16-21.
 Operation and construction ss. 22-37.
 Repeal s. 39.
 Coming into force s. 40.

[Assented to April 3, 1907.]

His Majesty by and with the advice and consent of the Legislative Assembly of Saskatchewan enacts as follows:

SHORT TITLE.

1. Short title.— This Act may be cited as "The Wills Act."

2. Interpretation.— In this Act unless the context otherwise requires:

(1.) **Will.**— The expression "will" shall extend to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power and also to a disposition by will and testament and to any other testamentary disposition;

(2.) **Real property.**— The expression "real property" shall extend to messuages, lands, rents and hereditaments whether of freehold or any other tenure and whether corporeal, incorporeal or personal and to any undivided share thereof and to any estate right or interest other than a chattel interest therein;

(3.) **Personal property.**— The expression "personal property" shall extend to leasehold estates and other chattels real and also moneys, shares of government and other stocks or funds, securities for money not being real property, debts *choses in action*, rights, credits, goods and all other property whatsoever other than real property as above defined;

(4.) **Person and testator.**— The expressions "person" and "testator" shall include a married woman;

(5.) **Issue.**— The expression "issue" includes all lawful lineal descendants of the testator.

WHO MAY MAKE A WILL.

3. Power to dispose of all property.— Estates "*par autre vie*."— **Rights of entry.**— **Property acquired after the will.**— Every person may devise, bequeath or dispose of by will executed in manner hereinafter mentioned all real property and personal property to which he may be entitled at the time of his death and which if not so devised, bequeathed or disposed of would devolve upon his heir at law or personal representative; and the power hereby given shall extend to estate *par autre vie* whether there be

or be not any special occupant thereof and whether the same be corporeal or incorporeal hereditaments; and also to all contingent, executory or other future interests in any real or personal property whether the testator be or be not ascertained as the person or one of the persons in whom the same may respectively become vested and whether he be entitled thereto under the instrument by which the same were respectively created of under any disposition thereof by deed or will and also to all rights of entry for conditions broken and other rights of entry and also to such of the same estates, interests and rights respectively and other real and personal property as the testator may be entitled to at the time of his death notwithstanding that he may become entitled to the same subsequently to the execution of his will.

4. Infant cannot make will.—No will made by any person under the age of twenty-one years shall be valid.

5. Married woman may make a will as if a "feme sole."—

Any married woman whether married before or after the passing of this Act and without obtaining her husband's consent or without his knowledge either of her will or of its contents may by such will executed as in this Act provided devise, bequeath or dispose of any real or personal property to which she is entitled either at law or in equity and whether the same is acquired before or after marriage in as free and ample a manner as if she were a *feme sole*.

6. Wills of soldiers and sailors.—Any soldier being in actual military service or mariner or seaman at sea may dispose of his personal property in the manner in which he might have done before the passage of this Act.

FORM AND MODE OF EXECUTION.

7. Formalities of execution.—No will shall be valid unless it is in writing and executed in manner hereinafter mentioned, that is to say: it shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator but no form of attestation shall be necessary.

8. Signature to will.—Every will shall so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid be deemed to be valid within the meaning of this Act if the signature is so placed at or after or following or under or beside or opposite to the end of the will that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will or by the circumstance that a blank space intervenes between the concluding word of the will and the signature or by the circumstance that the signature is placed among the words of the "testimonium" clause or of the clause of attestation or follows or is after or under the clause of attestation either with or without a blank space intervening or follows or is after or under or beside

the names or one of the names of the subscribing witnesses or by the circumstance that the signature is on a side or page or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it nor shall it give effect to any disposition or direction inserted after the signature was made.

9. Appointment by will to be executed as a will.—No appointment made by will in exercise of any power shall be valid unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall so far as respects the execution and attestation thereof be a valid execution of a power of appointment by will notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity.

10. Due execution sufficient.—Every will executed in manner hereinbefore required shall be valid without any other publication thereof.

11. Will not invalid if witness incompetent.—If any person who attests the execution of a will is at the time of the execution thereof or becomes at any time afterwards incompetent to be admitted a witness to prove the execution thereof such will shall not on that account be invalid.

12. Devise to witness to be void, but witness may prove execution.—If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise or legacy affecting any real or personal property (other than a charge for the payment of a debt) is thereby given, such devise or legacy shall so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person, wife or husband be null and void and such person so attesting shall be admitted to prove the execution of such will or the validity or invalidity of such will notwithstanding such devise or legacy, provided that where there are two competent witnesses to the will beside such person such devise, bequest or appointment shall not be void.

13. Charge of debts on estate not to disqualify witness.—If by any will any real or personal property is charged with any debt or debts and any creditor or the wife or husband of any creditor whose debt is so charged attests the execution of such will such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

14. Executor may be a witness.—No person shall on account of his being an executor of a will be incompetent to be admitted to prove the validity or invalidity thereof.

15. Execution of will outside the province.—Every will made out of the province (whatever was the domicile of the testator at the time of making the same or at the time of his death) shall as regards personal property be held to be well executed for the purpose of being admitted to probate in this province if the same is made according to the forms required either:

- (a) By the law of this province; or
- (b) By the law of the place where the testator was domiciled when the same was made; or
- (c) By the law of the place where the same was made; or
- (d) By the law then in force in that part of his Majesty's dominions where he had his domicile of origin.

REVOCATION AND ALTERATION.

16. Will not revoked by change of domicile.—No will shall be held to be revoked or to have become invalid nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same.

17. Marriage to revoke will except in certain cases.—Every will shall be revoked by the marriage of the testator except in the following cases, namely:

- (a) Where it is declared in the will that the same is made in contemplation of such marriage;
- (b) Where a will is made in exercise of a power of appointment and the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator or the person entitled as next of kin;
- (c) Where the wife or husband of the testator elects to take under the will by an instrument in writing signed by said husband or wife and filed within one year after the testator's death in the court in which probate of such will is taken or sought to be taken;

18. Presumption in alteration of circumstances not to revoke.—No will shall be revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances.

19. How revocation effected.—No will or codicil or any part thereof shall be revoked otherwise than as aforesaid or by another will or codicil executed in manner by this Act required or by some writing declaring an intention to revoke the same and executed in the manner in which a will is by this Act required to be executed or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.

20. Obliteration, etc., effect of.—No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect except so far as the words or effect of the will before such alteration are not apparent unless such alteration is executed in the manner by this Act required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed if the signature of the testator made by himself or some other person in his presence and by his direction and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or in some other part of the will.

21. Revoked will how revived.—No will or codicil or any part thereof which has been in any manner revoked shall be revived otherwise than by the re-execution thereof or by a codicil executed in manner in this Act required and showing an intention to revive the same; and when any will or codicil which has been partly revoked and afterwards wholly revoked is revived such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof unless an intention to the contrary is shewn.

OPERATION AND CONSTRUCTION.

22. A devise not to take effect as against personal representatives.—Excepting such devises as are made by the testator to his personal representative either in his representative capacity or for his own use no devise of land shall be valid or effectual as against the personal representatives of the testator until the land affected thereby is transferred to the devisee thereof by the personal representatives of the devisor or testator.

23. Conveyances, etc., how far they shall affect will previously made.—No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal property therein comprised except an act by which such will is revoked as in this Act mentioned shall prevent the operation of the will with respect to such estate or interest in such real or personal property as the testator has power to dispose of by will at the time of his death.

24. Will to be construed as made if immediately before death.—Every will shall be construed with reference to the real and personal property affected by it to speak and take effect as if it had been executed immediately before the death of the testator unless a contrary intention appears by the will.

(2) This section shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it; and such will shall not be required to be re-executed or republished after the death of her husband.

25. Lapsed legacies included in residuary devise.—Unless a contrary intention appears by the will such real property or interest therein as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the life time of the testator or by reason of the devise being contrary to law or otherwise incapable of taking effect shall be included in the residuary devise, if any, contained in such will.

26. Rules for construing devise of real property in certain cases.—A devise of the land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it shall be construed to include the leasehold estate of the testator or his leasehold estates or any of them to which such description extends as the case may be as well as freehold estates unless a contrary intention appears by the will.

27. A general devise of realty or personalty to include property over which testator has a general power of appointment.—A general devise of the real property of the testator or of the real property of the testator in any place or in the occupation of any person mentioned in his will or otherwise described in a general manner shall be construed to include any real property or any real property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention appears by the will; and in like manner a bequest of the personal property of the testator or any bequest of personal property described in a general manner shall be construed to include any personal property or any personal property to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper and shall operate as an execution of such power unless a contrary intention appears by the will.

28. Devise of real property without words of limitation.—Where any real property is devised to any person without any words of limitation such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property unless a contrary intention appears by the will.

29. Devise of real property with words of limitation.—Any devise or limitation which heretofore would have created an estate tail shall be construed to pass or transfer the absolute ownership or the greatest estate that the deviser or testator had in the land.

30. Meaning of "heir" in a devise of real property.—Where any real property is devised by any testator to the heir or heirs of such testator or of any other person and no contrary or other intention is signified by the will the words "heir" and "heirs" shall be construed to mean the person or persons to whom such real property would descend under the law of Saskatchewan in the case of intestacy.

31. Import of words "die without issue" or to that effect.—**—Proviso.**—In any devise or bequest of real or personal property the words "die without issue" or "die without leaving issue" or "have no issue" or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person and not an indefinite failure of his issue unless a contrary intention appears by the will or by reason of such person having what but for section 7 of *The Land Titles Act* or section 29 of this Act would have been a prior estate tail or of a preceding gift being without any implication arising from such words a limitation of what but for the said sections would have been an estate tail to such person or issue or otherwise; but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

32. When devise to a trustee shall pass the whole estate beyond what requisite for the trust.—Where any real property

is devised to a trustee without any express limitation of the estate to be taken by such trustee and the beneficial interest in such real property or in the surplus rents and profits thereof is not given to any person for life or such beneficial interest is given to any person for life but for the purposes of the trust may continue beyond the life of such person such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real property and not an estate determinable when the purposes of the trust are satisfied.

33. Devise of real property to executor or trustee, how construed.—Where any real property is devised to any trustee or executor such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property unless a definite term of years absolute or determinable or an estate of freehold is thereby given to him expressly or by implication.

34. When devise of estate tail shall not lapse.—Where any person to whom any real property is devised for what but for section 7 of *The Land Titles Act* or section 29 of this Act would have been an estate tail or for an estate *in quasi entail* dies in the lifetime of the testator leaving issue who would be inheritable under such entail if such estate existed and any such issue are living at the time of the death of the testator such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will.

35. Devise to testator's children not to lapse if they have issue living.—Where any person being a child or other issue of the testator to whom any real or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator leaving issue and any of the issue of such person are living at the time of the death of the testator such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator unless a contrary intention appears by the will.

36. Illegitimate child taking under will of mother.—If in any will of a female testatrix any devise or bequest is made by her to or for her issue or to or for her child or children no child of such testatrix shall be debarred from taking under such will for the reason only that such child is an illegitimate child of the testatrix.

37. Real property charged with mortgage primarily liable for payment of mortgage.—Where any person dies seised of or entitled to any estate or interest in any real property which at the time of his death was or is charged with the payment of any sum or sums of money by way of mortgage and such person has not by his will or deed or other document signified any contrary or other intention the heir or devisee to whom such real property descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal property or any other real property of such person; but the real property so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all

mortgage debts with which the same is charged every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2) Nothing herein contained shall affect or diminish any right of the mortgagee of such real estate to obtain full payment or satisfaction of his mortgage debt out of the personal property of the person so dying as aforesaid or otherwise.

38. General directions for debts of testator.—In the construction of any will or deed or other document to which the next proceeding section of this Act relates a general direction that the debts or that all the debts of the testator shall be paid out of his personal property shall not be deemed to be a declaration of an intention contrary to or other than the rule in the said section contained unless such contrary or other intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt or charged by way of mortgage on any part of his real property.

REPEAL.

39. Repeal of sections 26 to 35 The North-West Territories Act.—Sections 26 to 35 both inclusive of The Northwest Territories Act being chapter 50 of The Revised Statutes of Canada (1886) in so far as the same applies to the territory now comprising the province of Saskatchewan and all provisions of the law in force in the province repugnant to or inconsistent with this Act shall upon the coming into force of this Act be repealed.

40. This Act shall come into force on the first day of July, 1907.

MANITOBA

R. S. M., 1902, CHAP. 174.

An Act respecting Wills.

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INTERPRETATION OF EXPRESSIONS..	s. 2.
"Will," s-s. (a).	
"Real estate," s-s. (b).	
"Personal Estate," s-s. (c).	
"Person"—"Testator," s-s. (d).	
"Mortgage," s-s. (e).	
WHO MAY MAKE A WILL..	ss. 3, 4.
Every person may will property, s. 3.	
Testator must be over 21 years of age, s. 4.	
EXECUTION AND ATTESTATION..	ss. 5-9.
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Signature, s. 6.	
Appointments made by, s. 7.	
Soldiers or seamen in active service, s. 8.	
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HOLOGRAPH WILLS..	s. 10.
WITNESSES..	ss. 11-14
Incompetency, s. 11.	
Devise to witness not to affect will, s. 12.	
Creditor, etc., can witness, s. 13.	
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REVOCATION—ALTERATION..	ss. 15-19.
Marriage to revoke, s. 15.	
Alteration in circumstances will not revoke by presumption, s. 16.	
How to revoke, s. 17.	
Alterations after execution, s. 18.	
Validating revoked will by re-execution, s. 19.	
OPERATION AND CONSTRUCTION..	ss. 20-31
Conveyance to devisee necessary as against personal representative, s. 20.	
Conveyance subsequent to execution, s. 21.	
How to be construed, s. 22.	
In case of death of devisee in life-time of testator, s. 23.	
General descriptions, s. 24.	
General devise, s. 25.	
Absence of words of limitation, s. 26.	
"Without issue," s. 27.	
Devise to trustee or executor s. 28.	
Absence of express limitations, s. 29.	
Estate tail where devisee dies before testator, s. 30.	
Death of child in testator's lifetime, s. 31.	
MORTGAGE DEBTS..	ss. 32, 33.
Death of person entitled to real estate charged..	s. 32.
General directions as to debts, s. 33.	
His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—	

SHORT TITLE.

1. Short title.—This Act may be cited as “The Manitoba Wills Act.” R.S.M., c. 150, s. 1.

INTERPRETATION.

2. Interpretation.—In this Act, unless the context otherwise requires,—

(a.) **Will.**—The expression “will” extends to and includes a testament, and a codicil, and an appointment by will or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament, and also any other testamentary disposition;

(b.) **“Real estate.”**—The expression “real estate” includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right or interest, other than a chattel interest, therein;

(c.) **“Personal estate.”**—The expression “personal estate” includes leasehold estates and other chattels real and also moneys, shares of government and other funds, securities for money (not being real estate) debts, choses in action, rights, credits, goods and all other property whatsoever which by the law of England devolves upon the executor, or administrator and to any share or interest therein;

(d.) **“Person.”**—**“Testator.”**—(d) The expression “person” and “testator” respectively include a married woman;

(e.) **“Mortgage.”**—The expression “mortgage” includes any lien for unpaid purchase money, and any charge, incumbrance or obligation of any nature whatever upon any lands or tenements of a testator or intestate. R.S.M., c. 150, s. 2.

WHO MAY MAKE A WILL.

3. Disposition of real estate and personal property.—

Every person may devise, bequeath or dispose of, by will executed in manner hereinafter mentioned, all real estate and personal estate which he may be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon his heir at law, or upon his executor or administrator; and the power given hereby shall extend to estates *par autre vie*, whether there be or be not any special occupant thereof, and whether the same be corporeal or incorporeal hereditaments, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator be or be not ascertained as the person or one of the persons in whom the same may respectively become vested, and whether he be entitled thereto under the instrument by which the same were respectively created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. R.S.M. c. 150, s. 3, *part*.

4. Testator must be 21 years of age.—No will made by any person under the age of twenty-one years shall be valid. R.S.M., c. 150, s. 4.

EXECUTION AND ATTESTATION.

5. How will shall be valid.—No will shall be valid, unless it be in writing and be executed in manner hereinafter mentioned, that is to say:—It shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary. R.S.M., c. 150, s. 5.

6. Signature to will.—Every will, so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid, shall be deemed to be valid, within the meaning of this Act, if the signature be so placed, at, or after, or following, or under, or beside, or opposite to, the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will, and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause or of the clause of attestation, or follows or is after or under the clause of attestation, either with or without a blank space intervening, or follows, or is after or under or beside, the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion, of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under this Act shall be operative to give effect to any disposition or direction, which is underneath or which follows the signature, nor shall it give effect to any disposition or direction inserted after the signature was made. R.S.M., c. 150, s. 6.

7. Appointments made by will.—No appointment made by will, in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.M., c. 150, s. 7.

8. Soldiers in active service.—Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the passing of this Act. R.S.M., c. 150, s. 8.

9. Validity.—Every will executed in manner hereinbefore required shall be valid without any other publication thereof. R.S.M., c. 150, s. 9.

HOLOGRAPH WILLS.

10. Holograph will.—A holograph will, wholly written and signed by the testator himself, shall be subject to no particular form, nor shall it require an attesting witness or witness. R.S.M., c. 150, s. 10.

WITNESSES.

11. Incompetency of witness.—If any person who attests the execution of a will be at the time of the execution thereof, or become at any time afterwards, incompetent to be admitted as a witness to prove the execution thereof, such will shall not on that account be invalid. R.S.M., c. 150, s. 11.

12. Devise to witness not to affect validity of will.—If any person attest the execution of any will, to whom, or to whose wife or husband, any beneficial devise, or legacy, estate, interest, gift or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void; and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will. R.S.M., c. 150, s. 12.

13. Creditor, "et al," can be witnesses.—In case, by any will, any real or personal estate is charged with any debt or debts, and any creditor or the wife or husband of any creditor whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. R.S.M., c. 150, s. 13.

14. Executor competent as a witness.—No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or a witness to prove the validity or invalidity thereof. R.S.M., c. 150, s. 14.

REVOCATION—ALTERATION.

15. Marriage to revoke testator's will.—Every will shall be revoked by the marriage of the testator, except a will made in the exercise of a power of appointment where the real or personal estate thereby appointed would not, in default of such appointment, pass to the testator's heir, executor or administrator, or the person entitled as the testator's next of kin. R.S.M., c. 150, s. 15.

16. Will not revoked by presumption on ground of alteration in circumstances.—No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances. R.S.M., c. 150, s. 16.

17. How will may be revoked.—No will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinafter required,

or by some writing declaring an intention to revoke the same and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying of the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. R.S.M. c. 150, s. 17.

18. Alterations after execution not valid.—Exception.—Execution of alteration.—No obliteration, interlineation or alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration be executed in a like manner as hereinbefore is required for the execution of the will; but the will with such alteration as part thereof shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or in some part of the will opposite, or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration and written at the end or in some other part of the will. R.S.M., c. 150, s. 18.

19. Will revoked to be re-executed.—No will or codicil, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required and showing an intention to revive the same; and where any will or codicil which has been partly revoked, and if afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R.S.M., c. 150, s. 19.

OPERATION AND CONSTRUCTION.

20. Devises not to take effect against personal representative until conveyance.—No devise shall be valid or effectual as against the personal representative of the testator, until the land affected thereby is conveyed to the devisee thereof by the personal representative of the devisor, saving and excepting such devises as are made by the testator to his personal representative, either in his representative capacity or for his own use. This clause shall be deemed to have taken effect on and from the first day of July in the year one thousand eight hundred and eighty-five. R.S.M., c. 150, s. 20.

21. Conveyance subsequent to execution of will.—No conveyance or other act made or done subsequently to the execution of the will, of or relating to any real or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator had power at the time of his death to dispose of by will. R.S.M., c. 150, s. 21.

22. How to be construed.—Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appear by the will. R.S.M., c. 150, s. 22.

23. Death of the devisee in lifetime of testator.—Unless a contrary intention appear by the will, such real estate or interest therein as is comprised or intended to be comprised in any devise in such will contained, which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. R.S.M., c. 150, s. 23.

24. How general description of land to be construed.—A devise of land of the testator or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description will extend, as the case may be, as well as freehold estates, unless a contrary intention appear by the will. R.S.M., c. 150, s. 24.

25. General devise, further construction of.—A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate or any real estate to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appear by the will; and, in like manner, a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appear by the will. R.S.M., c. 150, s. 25.

26. Absence of words of limitation.—Where any real estate is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will, in such real estate, unless a contrary intention appear by the will. R.S.M., c. 150, s. 26.

27. "Without issue," how construed.—In any devise or bequest of real or personal estate, the expression "die without issue," or the expression "die without leaving issue," or the expression "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of the issue unless a contrary intention appear in the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue or otherwise; but this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift be born, or if there be no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S.M., c. 150, s. 27.

28. When devised to a trustee or executor.—Where any real estate is devised to a trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold, be thereby given to him expressly or by implication. R.S.M., c. 150, s. 28.

29. When devised without any express limitation.—Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life but the purpose of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate and not an estate determinable when the purposes of the trust are satisfied. R.S.M., c. 150, s. 29.

30. Estate tail where devisee dies before testator.—Where any person to whom any real estate is devised for an estate tail or an estate in *quasi* entail dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appear by the will. R.S.M., c. 150, s. 30.

31. Where a child or other issue of testator dies in lifetime of testator.—Where any person, being a child or other issue of the testator, to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appear by the will. R.S.M., c. 150, s. 31.

MORTGAGE DEBTS.

32. When person dies entitled to real estate charged.—Where any person dies, seized of or entitled to any estate or interest in any real estate, which at the time of his death, was or is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document, signified any contrary or other intention, the heir or devisee to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate or any other real estate of such person; but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof:

Proviso.—Provided that nothing herein contained shall affect or diminish any right of the mortgagee of such real estate to obtain full payment or satisfaction of his mortgage debt, either out

of the personal estate of the person so dying as aforesaid or otherwise, and nothing herein contained shall affect the right of any person claiming under or by virtue of any will, deed or document made before the passing of this Act. R.S.M., c. 150, s. 32.

33. General directions for debts of testator.—In the construction of any will or deed or other document, to which the next preceding section of this Act relates, a general direction that the debts, or that all the debts, of the testator shall be paid out of his personal estate, shall not be deemed to be a declaration of an intention contrary to or other than the rule in the said section contained, unless such contrary or other intention be further declared by words expressly or by necessary implication referring to all or some of the testator's debts, or debts charged by way of mortgage on any part of his real estate. R. S. M., c. 150, s. 33.

ONTARIO

R. S. O., 1897, CHAP. 128.

AN ACT RESPECTING WILLS.

Short title, s. 1.

Wills before 1st January, 1874, ss. 2-6.

Wills after 1st January, 1874:

Preliminary, ss. 7-9.

Property disposable by will, and persons who may dispose by will, ss. 10, 11.

Execution of wills, ss. 12-15.

Wills of soldiers and sailors, s. 14.

Witnesses being interested under the will not to invalidate, ss. 16-19.

Revocation of wills, ss. 20-22.

Obliterations, Interlineations, etc., s. 23.

Revival, s. 24.

Construction of wills:

Devise, etc., to operate upon any interest remaining in testator, s. 25.

Operation of wills from time of death of testator, s. 26.

Lapsed devise to sink into residuary devise, s. 27.

General devise what to include, ss. 28-30.

Meaning of "heir" in a devise, s. 31.

"Die without issue," meaning of, s. 32.

General devise to trustees, what estate to pass, ss. 33, 34.

Cases where devise does not lapse by death of a devisee, ss. 35, 36.

Mortgage debts and charges primarily chargeable on land, ss. 37, 38.

Imperial Acts repealed, s. 39.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. Short title.—This Act may be cited as "*The Wills Act of Ontario.*" R. S. O., 1887, c. 109, s. 1.

WILLS BEFORE 1st JANUARY, 1874.

2. Interpretation.—"Land."—In the next succeeding three sections of this Act the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties, or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder or contingency. R. S. O., 1887, c. 109, s. 2.

3. Estates acquired after the making of a will may pass by the will where such intention is expressed.—Where a will made before and not re-executed, republished or revived after the

first day of January, 1874, by any person dying after the sixth day of March, 1834, contains a devise in any form of words of all such real estate as the testator dies seised or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof. R. S. O., 1887, c. 109, s. 3.

4. A devise of land shall be taken to carry as large an estate as the testator had in the land, unless a contrary intention is expressed.—Where land is devised in any such will as aforesaid, it shall be considered that the devisor intended to devise all such estate as he was seised of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seised of at the time of making the will containing such devise. R. S. O., 1887, c. 109, s. 4.

5. Witnesses need not subscribe in the presence of the testator.—Any will affecting land executed after the sixth day of March, 1834, and before the first day of January, 1874, in the presence of and attested by two or more witnesses, shall have the same validity and effect as if executed in the presence of and attested by three witnesses; and it shall be sufficient if the witnesses subscribed their names in presence of each other, although their names were not subscribed in presence of the testator. R.S.O., 1887, c. 109, s. 5.

6. Will by married woman between 4th May, 1859, and 1st January, 1874.—After the fourth day of May, 1859, and before the first day of January, 1874, every married woman might, by devise or bequest executed in the presence of two or more witnesses, neither of whom was her husband, make any devise or bequest of her separate property, real or personal, or of any rights therein, whether such property was acquired before or after marriage, to or among her child or children issue of any marriage, and failing there being any issue, then to her husband, or as she might see fit, in the same manner as if she were sole and unmarried. R. S. O., 1887, c. 109, s. 6.

WILLS AFTER 1ST JANUARY, 1874.

7. Operation of succeeding sections. Imp. Act, 1 V., c. 26, s. 34.—Unless herein otherwise expressly provided, the subsequent sections of this Act shall not extend to any will made before the first day of January, 1874; but every will re-executed or re-published, or revived by any codicil, shall, for the purpose of the said sections, be deemed to have been made at the time at which the same was so re-executed, re-published or revived. R. S. O., 1887, c. 109, s. 7.

8. Application of sections 21, 22, 25 and 26.—Sections 22, 25 and 26 of this Act shall not apply to the will of any person who was dead before the first day of January, 1869, but shall apply to the will of every person who has died since the thirty-first day of December, 1868, or who dies after the passing of this Act. R. S. O., 1887, c. 109, s. 8.

9. Interpretation. Imp. Act, 1 V., c. 26, s. 1.—In the construction of the sections numbered 10 to 39 inclusive in this Act,

1. "Will."—12 Car. II., c. 24.—"Will" shall extend

to a testament, and to a codicil, and to an appointment by will, or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament, or devise of the custody and tuition of any child, by virtue of the Act passed in the twelfth year of the reign of King Charles the Second, entitled "*An Act for taking away the Court of Wards, and liveries and tenures in capite, and by knight's service and purveyance, and for settling a revenue upon His Majesty in lieu thereof*," and to any other testamentary disposition;

(2.) "**Real estate.**"—"Real estate" shall extend to messuages, lands, rents, and hereditaments, whether freehold or of any other tenure, and whether corporeal, incorporeal or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein;

(3.) "**Personal estate.**"—"Personal estate" shall extend to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein;

4. "**Mortgage.**" **Imp. Act. 30-31 V., c. 69, s. 2.**—"Mortgage" shall include any lien for unpaid purchase money, and any charge, incumbrance, or obligation of any nature whatever upon any lands or tenements of a testator or intestate. R. S. O., 1887, c. 100, s. 9.

(5.) "**Person.**"—"Testator."—"Person" and "Testator" shall include a married woman. 60 V., c. 3, s. 3. See R. S. O., 1877, c. 106, s. 9 (4); R. S. O., 1887, c. 132, s. 3. (1)

10. Power to dispose of all property. **Imp. Act, 1 V., c. 26, s. 3.—Estates "par autre vie."**—"Contingent interests.—Rights of entry.—Property acquired after the will.—Every person may devise, bequeath, or dispose of by will executed in manner hereinafter mentioned, all real estate and personal estate to which he may be entitled, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon his heir at law, or upon his executor or administrator; and the power hereby given shall extend to estates *par autre vie*, whether there be or be not any special occupant thereof, and whether the same be corporeal or incorporeal hereditaments; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator be or be not ascertained as the person or one of the persons in whom the same may respectively become vested, and whether he be entitled thereto under the instrument by which the same were respectively created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights of entry, and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will. R. S. O., 1887, c. 100, s. 10.

11. Wills by infants invalid. **Imp. Act, 1 V., c. 26, s. 7.**—No will made by any person under the age of twenty-one years shall be valid. R. S. O., 1887, c. 100, s. 11.

12. Execution. **Imp. Act, 1 V., c. 26, s. 9.—Attestation.**—(1) No will shall be valid unless it is in writing, and executed in manner hereinafter mentioned; that is to say, it shall be signed at

the foot or end thereof by the testator, or by some other person in his presence, and by his direction; and such signature shall be made or acknowledged by the testator, in the presence of two or more witnesses present at the same time, and such witnesses, shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary.

(2.) **Signature. Imp. Act, 15-16 V., c. 24, s. 1.**—Every will, so far only as regards the position of the signature of the testator, or of the person signing for him as aforesaid, shall be deemed to be valid, within the meaning of this Act, if the signature is so placed, at, or after, or following, or under or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed as his will; and no such will shall be affected by the circumstance that the signature does not follow or is not immediately after the foot or end of the will, or by the circumstance that a blank space intervenes between the concluding word of the will and the signature, or by the circumstance that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows or is after or under the clause of attestation either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses, or by the circumstance that the signature is on a side, or page, or other portion of the paper or papers containing the will, whereon no clause or paragraph or disposing part of the will is written above the signature, or by the circumstance that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature; and the enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under this Act shall be operative to give effect to any disposition or direction which is underneath, or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. R.S.O., 1887, c. 100, s. 12.

13. Appointments by will how to be exercised. Imp. Act, 1 V., c. 26, s. 10.—No appointment made by will, in exercise of any power, shall be valid, unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R.S.O., 1887, c. 109, s. 13.

14. Wills of personalty of soldiers and sailors. Imp. Act, 1 V., c. 26, s. 11.—Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the passing of this Act. R.S.O., 1887, c. 109, s. 14.

15. Publication unnecessary. Imp. Act, 1 V., c. 26, s. 13.—Every will executed in manner hereinbefore required shall be valid without any other publication thereof. R.S.O., 1887, c. 109, s. 15.

16. Will not invalid if witness incompetent. Imp. Act, 1 V., c. 26, s. 14.—If any person who attests the execution of a will is, at the time of the execution thereof, or becomes at any

time afterwards, incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. R.S.O., 1887, c. 109, s. 16.

17. Gifts, etc., to witness invalid. Imp. Act, 1 V., c. 26, s. 15.—If any person attests the execution of any will, to whom, or to whose wife or husband, any beneficial devise, legacy, estate, interest, gift, or appointment of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) is thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or such wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will. R.S.O., 1887, c. 109, s. 17.

18. Creditors competent witnesses. Imp. Act, 1 V., c. 26, s. 16.—In case by any will any real or personal estate is charged with any debt or debts, and any creditor, or the wife or husband of any creditor whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. R.S.O., 1887, c. 109, s. 18.

19. Executor competent witness. Imp. Act, 1 V., c. 26, s. 17.—No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof. R.S.O., 1887, c. 109, s. 19.

20. Revocation by marriage. Imp. Act, 1 V., c. 26, s. 18.—(1) Every will made by any person dying on or after the 13th day of April, 1897, shall be revoked by the marriage of the testator, except in the following cases, namely:—

(a.) **Exceptions.**—Where it is declared in the will that the same is made in contemplation of such marriage;

(b) Where the wife or husband of the testator elects to take under the will, by an instrument in writing signed by the wife or husband and filed within one year after the testator's death in the office of the surrogate clerk at Toronto;

(c) **Imp. Act, 22-23 Chas. II. c. 10, 29. Chas II., c. 3.—**

Where the will is made in the exercise of a power of appointment and the real or personal estate thereby appointed would not, in default of such appointment, pass to the testator's heir, executor or administrator, or the person entitled as the testator's next of kin under *The Statute of Distribution*. 60 V., c. 20, s. 1.

(2) The will of any testator who died between the 31st day December, 1868, and the 13th day of April, 1897, shall be held to have been revoked by his subsequent marriage, unless such will was made under the circumstances set forth in clause (c). R.S.O., 1887, c. 109, s. 20.

21. No revocation by change in circumstances. Imp. Act, 1 V., c. 26, s. 19.—No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances. R.S.O., 1887, c. 109, s. 21. *See section 8 of this Act.*

22. How only will can be revoked. Imp. Act, 1 V., c. 26,

s. 20.—No will or codicil or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same, by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. R.S.O., 1887, c. 109, s. 22. *See section 8 of this Act.*

23. Obliterations, interlineations, etc. Imp. Act, 1 V., c.

26, s. 21.—No obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses are made in the margin or in some other part of the will opposite or near to such alteration, or at the foot or end of, or opposite to, a memorandum referring to such alteration, and written at the end or in some other part of the will. R.S.O., 1887, c. 109, s. 23.

24. Revival. Imp. Act, 1 V., c. 26, s. 22.—No will or codicil, or any part thereof, which has been in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same; and where any will or codicil has been partly revoked, and afterwards wholly revoked, is revised, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R.S.O. 1887, c. 109, s. 24.

25. No act as to property named in the will to prevent operation of the will as to any interest left in testator. Imp. Act, 1 V., c. 26, s. 23.—No conveyance or other act made or done subsequently to the execution of a will, of or relating to any real or personal estate therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real or personal estate, as the testator had power to dispose of by will at the time of his death. R.S.O. 1887, c. 109, s. 25. *See section 8 of this Act.*

26. Will to speak from death. Imp. Act, 1 V., c. 26, s. 24.—
(1) Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 26.

(2) **Imp. Act, 56-57 V., c. 63, s. 3.**—This section shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband. 60 V., c. 22, s. 2. *See section 8 of this Act.*

27. Lapsed devise to sink into residuary devise. Imp. Act, 1 V., c. 26, s. 25.—Unless a contrary intention appears by the will, such real estate or interest therein as is comprised or intended to be comprised in any devise, in such will contained, which fails

or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise, incapable of taking effect, shall be included in the residuary devise (if any) contained in such will. R.S.O. 1887, c. 109, s. 27.

28. Leaseholds when may pass under a general devise. **Imp. Act, 1 V., c. 26, s. 26.**—A devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include his leasehold estates, or any of them to which such description will extend (as the case may be), as well as freehold estates, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 28.

29. A general devise of realty or personality to include property over which testator has a general power of appointment. **Imp. Act, 1 V., c. 26, s. 27.**—A general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description will extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description will extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 29.

30. General devise to pass whole estate in the land devised. **Imp. Act, 1 V., c. 26, s. 28. Rev. Stat. c. 127.**—Where any real estate is devised to any person without any words of limitation, such devise shall subject to *The Devolution of Estates Act*, be construed to pass the fee simple, or other the whole estate or interest, which the testator had power to dispose of by will, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 30.

31. Meaning of "heir" in a devise of real estate.—Where any real estate is devised by any testator, dying on or after the 5th day of March, 1880, to the heir or heirs of such testator, or of any other person, and no contrary or other intention is signified by the will, the words "heir" and "heirs" shall be construed to mean the person or persons to whom such real estate would descend under the law of Ontario in case of an intestacy. R.S.O. 1887, c. 109, s. 31.

32. Import of words "die without issue," or to that effect. **Imp. Act, 1 V., c. 26, s. 29.—Proviso.**—In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by

the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; but this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift be born, or if there be no issue who live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S.O. 1887, c. 109, s. 32.

33. When devise to trustee or executor shall pass whole estate of testator. Imp. Act, 1 V., c. 26, s. 30.—Where any real estate is devised to a trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold is thereby given to him expressly or by implication. R.S.O. 1887, c. 109, s. 33.

34. When devise to a trustee shall pass the whole estate beyond what is requisite for the trust. Imp. Act, 1 V., c. 26, s. 31. Rev. Stat. c. 127.—Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, is not given to any person for life, or such beneficial interest is given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall subject to *The Devolution of Estates Act*, be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust are satisfied. R.S.O. 1887, c. 109, s. 34.

35. When devises of estates tail shall not lapse. Imp. Act, 1 V., c. 26, s. 32.—Where any person to whom any real estate is devised for an estate tail or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 35.

36. Gifts to issue who leave issue on testator's death, shall not lapse. Imp. Act, 1 V., c. 26, s. 33; 36 V., c. 20, s. 30.—Where any person, being a child or other issue of the testator to whom any real or personal estate is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator, leaving issue, and any of the issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will. R.S.O. 1887, c. 109, s. 36.

37. Mortgage debts to be primarily chargeable on the lands. Imp. Act, 17-18 V., c. 113.—(1) Where any person has died since the first day of December, 1865, or hereafter dies seised of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other document signified any contrary

or other intention, the heir or devise to whom such real estate descends or is devised shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person; but the real estate so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same is charged, every part thereof according to its value bearing a proportionate part of the mortgage debts charged on the whole thereof.

(2.) **Proviso.**—Nothing herein contained shall affect or diminish any right of the mortgagee on such real estate to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid, or otherwise; and nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of January, 1874. R.S.O. 1887, c. 109, s. 37.

(3.) **Also liens for unpaid purchase money, etc., Imp. Act, 40-41 V., c. 15, s. 4.**—Where any person dies on or after the 13th day of April, 1897, seized of or entitled to any estate or interest in any real estate, which at the time of his death is charged with the payment of any sum of money by way of equitable charge, including any lien for unpaid purchase money, the provisions of this section shall apply to such charge in the same manner as they would be applicable if such charge were a mortgage. 60 V., c. 15, s. 4.

38. Consequence of direction that testator's debts be paid out of personalty. Imp. Act, 30-31 V., c. 69, s. 1, and 40-41 V., c. 34.—In the construction of any will or deed or other document to which the next preceding section of this Act relates, a general direction that the debts or that all the debts of the testator shall be paid out of his personal estate shall not be deemed to be a declaration of an intention contrary to or other than the rule in the said section contained, unless such contrary or other intention is further declared by words expressly or by necessary implication referring to all or some of the testator's debts or debt charged by way of mortgage on any part of his real estate. R.S.O. 1887, c. 109, s. 38.

39. Acts repealed.—The Acts of the Imperial Parliament described in the Schedule to this Act (except so far as the same relate to any wills to which section 7 and the following sections of this Act do not extend) are, and shall continue to be, repealed to the extent in the third column of the said Schedule mentioned; but such repeal shall not revive any Act or provision of law repealed by them, nor shall the said repeal prevent the application of any of the said Acts, or of any Act or provision of law formerly in force, to any transaction, matter or thing anterior to the time of the repeal of the said Acts and to which they would otherwise apply. R.S.O. 1887, c. 109, s. 39.

SCHEDULE.

Acts Repealed	Title of Acts Repealed	Extend of Repeal
32 Hen. VIII. cap.	The Act of Wills, Wards and Primer Seizins, whereby a man may devise two parts of his land.	The whole Act.
32 Hen. VIII. cap. 1.	The Bill concerning the explanation of Wills.	The whole Act.
29 Car 2, cap. 3.	An Act for the prevention of frauds and Perjuries.	Sections 5, 6, 12, 19
4-5 Anne, cap. 16.	An Act for the amendment of the law and the better advancement of justice.	Section 14.
14 Geo. 2, cap. 20.	An Act to amend the law concerning Common Recoveries, and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for the prevention of Frauds and Perjuries."	Section 9.
25 Geo. 2, cap 6.	An Act for avoiding and putting an end to certain doubts and questions relating to the attestation of Wills and Codicils concerning real estates in that part of Great Britain called England, and in His Majesty's colonies and plantations in America.	The whole Act.

R.S.O. 1887, c. 109, Schedule.

2 EDW. VII., CHAR. 18.

AN ACT RESPECTING WILLS OF PERSONAL ESTATE.

[Assented to 17th March, 1902]

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario enacts as follows:

1. Short title.—This Act may be cited as The Wills Act of 1902.

2. "Will" what to include.—Where the word "will" occurs in this Act the said word shall be interpreted as in section 9 of The Wills Act of Ontario.

3. Wills executed out of Ontario when to be valid.—Every will made out of Ontario by a British subject (whatever may be the domicile of such person at the time of making the same or at the time of his death) shall as regards personal estate be held to be well executed for the purpose of being admitted in Ontario

to probate, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made or by the laws then in force in that part of His Majesty's Dominions where he had his domicile of origin.

4. Change of domicile not to revoke will.—No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered by reason of any subsequent change of domicile of the person making the same.

5. Wills not to be invalidated by Act.—Nothing in this Act contained shall invalidate any will as regards personal estate which would have been valid if this Act had not been passed, except as such will may be revoked or altered by any subsequent will made valid by this Act.

6. Application to wills of persons dying hereafter.—This Act shall extend only to wills made by persons who die after the passing of this Act.

NEW BRUNSWICK

C. S. N. B., 1903, CHAP. 160.

RESPECTING WILLS.

1. All property may be disposed of by will, including estates "per autre vie;" contingent interests;—rights of entry; and property acquired after execution of will.—Every person may dispose of by his will, executed in manner hereinafter required, all real and personal estate which he shall be entitled to at law or in equity at the time of his death, and which, if not so disposed of would devolve upon his heir, child, or next of kin, or upon his representatives; and the power hereby given shall extend to estates per *autre vie*, whether or not there shall be any special occupant thereof, and whether the same shall be a corporeal or incorporeal hereditament, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or not be ascertained as the person, or one of the persons, in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof, by deed or will, and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding he may become entitled to the same subsequently to the execution of his will. C. S., c. 77, s. 1.

2. Estates "per autre vie."—If no disposition by will be made of any estate per *autre vie* of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate per *autre vie*, whether a corporeal or incorporeal hereditament, it shall go to the representatives of the party that had the estate thereof by virtue of the grant, and if the same shall come to them either by reason of a special occupancy, or by virtue hereof, it shall be assets in their hands, and be applied and distributed in the same manner as the personal estate of the testator or intestate. C.S., c. 77, s. 2.

3. Disability of infant to make will.—No will made by any person under the age of twenty-one years shall be valid. C. S., c. 77, s. 3.

4. Will to be signed by testator in presence of two witnesses at one time who shall sign in his presence and in presence of each other.—No will shall be valid unless it shall be in writing, and executed in manner hereinafter mentioned, that is to say: It shall be signed at the foot or end thereof by the testator, or by some other person in his presence, and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall attest and subscribe the will in the presence of the testator, and in presence of each other; but any will, although not signed at the foot or end thereof, shall be valid if it be apparent from the will and position of the signature, or from the evidence of the witnesses thereto, that the same was intended by

the testator to be his last will; but no form of attestation shall be necessary. C. S., c. 77, s. 5.

5. Appointments to be executed like wills.—No appointment made by will in exercise of any power shall be valid, unless the same be executed in manner hereinbefore required; and every will so executed shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it shall have been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity; but any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done heretofore. C. S., c. 77, s. 6.

6. Wills of seamen, and non-commissioned officers of marines, of Royal Navy.—This Chapter shall not prejudice or affect any of the provisions of an Act of the Imperial Parliament passed in the eleventh year of the reign of King George the Fourth, and in the first year of King William the Fourth, intituled *An Act to amend and consolidate the Laws relating to the pay of the Royal Navy*, respecting the wills of petty officers and seamen in the Royal Navy, and non-commissioned officers of marines, so far as relates to their wages, pay, prize money, bounty money, and allowances, or other monies payable in respect of services in His Majesty's Navy. C. S. c. 77, s. 7.

7. Publication unnecessary.—Every will executed in manner hereinbefore required, shall be valid without any other publication. C. S., c. 77, s. 8.

8. Will not invalid for incompetency of witness.—If any person who shall attest the execution of a will shall, at that time, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. C. S., c. 77, s. 9.

9. Gift to an attesting witness to be void.—If any person shall attest the execution of any will, to whom, or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting, real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person, or wife or husband, be void; and such person so attesting, shall be admitted as a witness to prove the execution of such will, the validity or invalidity thereof, provided that when there are, exclusive of any witness so as above interested, two witnesses to the execution of a will, to whom, or to whose wives or husbands, there is no devise, legacy, estate, interest, gift, or appointment, as aforesaid, no person, nor the wife or husband of such person, shall be excluded from taking under any will which may have been proved by the two witnesses not interested thereunder as last mentioned. C. S., c. 77, s. 10.

10. Creditor witnessing will charging estate with debt, to be competent witness.—If by a will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall

attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, the validity, or invalidity thereof. C. S., c. 77, s. 11.

11. Competency of executor to witness will.—No person shall, on account of his being an executor of a will, be incompetent as a witness to prove the execution, the validity or invalidity thereof. C. S., c. 77, s. 12.

12. Will revoked by marriage.—Every will made by a man or woman, shall be revoked by his or her marriage, except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment pass to his or her heir, child, next of kin, or representative. C. S., c. 77, s. 13.

13. Will not to be revoked by presumption.—No will shall be revoked by any presumption growing out of an alteration in circumstances. C. S., c. 77, s. 14.

14. Revocation of will.—No will, or codicil, or any part of either, shall be revoked otherwise than as aforesaid, or by another will or codicil, executed in any manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner hereby already required, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence, and by his direction, with the intention of revoking the same. C. S., c. 77, s. 15.

15. Alteration, etc., in will not to have any effect unless executed as a will.—No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid, or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will with such alteration as a part thereof shall be deemed to be duly executed, if the signature of the testator, and the subscription of the witness, be made in the margin, or on some part of the will opposite or near to such alteration, or at the foot or end of, or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will. C. S., c. 77, s. 16.

16. Revival of revoked will.—No will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in the manner hereinbefore required, and showing an intention to revive the same; and when any will or codicil which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown. C. S., c. 77, s. 17.

17. Devise not inoperative by subsequent conveyance or other act.—No conveyance or other act made after the execution of the will, of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate, or interest in such real or personal estate, as the testator shall have power to dispose of by will at the time of his death. C. S., c. 77, s. 18.

18. Will to be construed as executed immediately before

death.— Every will shall be construed with reference to the real or personal estate comprised therein, as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will. C. S., c. 77, s. 19.

19. Residuary devise to include estates comprised in lapsed and void devises.— Unless a contrary intention appear by the will, such real estate, or interest therein, as shall be comprised or intended so to be, in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise, if any, contained in such will. C.S., c. 77, s. 20.

20. General devise of lands to include leaseholds.— A devise of land of the testator, or of his land in any place, or in the occupation of any person mentioned in his will, or described in a general manner, and any other general devise which would describe a leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator to which such description shall extend, as well as freehold estates, unless a contrary intention shall appear by the will. C. S., c. 77, s. 21.

21. General devise of real estate to include estates over which testator has power of appointment.— A general devise of the real estate of the testator, or of his real estate in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which the description shall extend (as the case may be), which he may have power to appoint, in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will. C. S., c. 77, s. 22.

22. Devise without words of limitation to pass fee.— Where any real estate shall be devised to any person without words of limitation, such devise shall be construed to pass the fee simple or the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appear by the will. C. S., c. 77, s. 23.

23. The words "die without issue," or "die without leaving issue," etc., to be construed to mean "die without issue living at death."— In any devise or bequest of real or personal estate the words "die without issue," or "die without leaving issue," or "have no issue," or any other words, which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a

limitation of an estate tail, to such person or issue, or otherwise; but nothing herein shall extend to cases where such words as aforesaid import if no issue described in a preceding gift shall be born, or if there shall be no issue, who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. C. S., c. 77, s. 24.

24. Devise to trustee, etc., to pass fee simple.—Exceptions.—

Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable, or an estate of freehold, shall thereby be given to him expressly or by implication. C.S., c. 77, s. 25.

25. Trustees under unlimited devise, to take fee where trust may continue beyond life of person beneficially entitled for life.—

Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by him, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate, which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied. C.S., c. 77, s. 26.

26. Devise of estate tail not to lapse.—Where any person to whom any real estate shall be devised, for an estate tail, or an estate in *quasi*-entail, shall die in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. C.S., c. 77, s. 27.

27. Gifts to children or other issue who leave issue living at testator's death, not to lapse.—

With any person being a child or other issue of the testator to whom any personal or real estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. C.S., c. 77, s. 28.

28. Will of married woman.—(1) Any married woman may make a will in the same manner as if she were a *feme sole*, and the consent of her husband shall not be necessary. (See Chap. 78, s. 3 (1).)

(2). The provisions of section 18 shall apply to the will of a married woman made during coverture whether she is or is not possessed of or entitled to any separate property at the time of making it; and such will shall not require to be re-executed or republished after the death of her husband. (See 55-56 V., c. 63, s. 3, Imp.)

29. Validity of will of personalty made out of Province if made according to the law of the place of execution.—

Every will and other testamentary instrument made out of the Province by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death), shall, as regards personal estate, be held to be well executed for the purpose of being admitted in this Province to probate, if the same be made according to the forms required, either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws then in force in that part of His Majesty's dominions where he had his domicile of origin. (See Imp. Act, 24 and 25 V., c. 114, s. 1).

30. Validity of will of personalty made within Province by British subject of whatever domicile if made according to law of Province.—Every will and other testamentary instrument made within this Province by any British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his death,) shall as regards personal estate, be held to be well executed, and shall be admitted to this Province to probate, if the same be executed according to the forms required by the laws for the time being in force in this Province. (See Imp. Act, 24 and 25 V., c. 114, s. 2).

31. Change of domicile not to invalidate will.—No will or other testamentary instrument shall be held to be revoked, or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same. (See Imp. Act, 24 and 25 V., c. 114, s. 3).

32. Ss. 29-31 not to invalidate any will.—Nothing in sections 29 to 31 of this Chapter contained shall invalidate any will or other testamentary instrument as regards personal estate, which would have been valid if the said last preceding three sections had not been passed, except as such will or other testamentary instrument may be revoked or altered by any subsequent will or testamentary instrument made valid by the said sections. (See Imp. Act, 24 and 25 V., c. 114, s. 4).

33. Application of four preceding sections.—The last four preceding sections of this Chapter shall extend only to wills and other testamentary instruments made by persons who die after the commencement of this Chapter. (See Imp. Act, 24 and 25 V., c. 114, s. 5).

34. Interpretation.—"Will."—"Real estate."—"Personal estate."—The words and expressions in this Chapter mentioned, and here following, which in their ordinary signification have a more confined or different meaning, shall, except where the nature of the provision or context excludes such interpretation, be interpreted as follows:—"Will" shall extend to a testament, and to a codicil and to an appointment by will or writing in nature of a will in exercise of a power, and to any other testamentary disposition; "real estate" shall extend to messuages, lands, rents and hereditaments, whether corporeal or incorporeal, or personal, and to any undivided share thereof, and to any estate, right or interest (other than a chattel interest) therein; and "personal estate" shall extend to chattels real, and to moneys, shares of funds, securities for money (not being real estates), debts, and other choses in action, goods, and all other property, or share, or interest therein. C.S., c. 77, s. 31.

NOVA SCOTIA

R. S. N. S., 1900, CHAP. 139.

OF WILLS.

SHORT TITLE.

1. Short title.—This Chapter may be cited as “The Wills Act.”

INTERPRETATION.

2. Interpretation.—In this Chapter, unless the context otherwise requires:

(a.) **“Will.”**—The expression “will” includes a codicil and an appointment by will or by writing in the nature of a will in exercise of a power, and also a disposition by will and testament or devise of the custody and tuition of any child, and any other testamentary disposition;

(b.) **“Real property.”**—The expression “real property” includes messuages, lands, rents and hereditaments, whether of freehold or any other tenure whatsoever, and wheresoever situated, and whether corporeal, incorporeal or personal, and any undivided share thereof, and any estate, right or interest, other than a chattel interest, therein;

(c.) **“Personal property.”**—The expression “personal property” includes leasehold estates and other chattels real, and also moneys, shares of government and other stocks or funds, securities for money not being real property, debts, rights of action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and any share or interest therein;

(d.) **“Issue.”**—The expression “issue” includes all lawful lineal descendants of the ancestor.

(e.) **“Person.”**—The expressions “person” and “testator” include a married woman. R. S., c. 89, s. 34.

TESTAMENTARY CAPACITY.

3. What may be devised.—Any person may devise, bequeath or dispose of by his will, executed as in this Chapter provided, all real property and all personal property to which he is entitled, either at law or in equity, at the time of his death, and which if not so devised, bequeathed or disposed of would devolve upon his heirs-at-law or representatives. R. S., c. 89, s. 1.

4. Infant cannot make will.—No will made by any person under the age of twenty-one years shall be valid. R. S., c. 89, s. 2.

5. Married woman may appoint executor.—Any married woman may, without her husband's consent, make a will appointing one executor or more to a will whereof she is executrix, or an appointment by will made in pursuance of a power to be executed notwithstanding coverture. R. S., c. 89, s. 3.

FORM AND MODE OF EXECUTION.

6. Formalities of execution.—No will shall be valid unless it is in writing and executed in manner hereinafter mentioned, that is to say:—It shall be signed at the end or foot thereof by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary. R. S., c. 89, s. 4.

7. Signature to will.—Every will shall so far only as regards the position of the signature of the testator or of the person signing for him, be deemed to be valid if the signature is so placed at or after, or following, or under, or beside, or opposite to the end of the will, that it is apparent on the face of the will that the testator intended to give effect by such signature to the writing signed in his will, and no such will shall be affected by the circumstance,—

(a) that the signature does not follow, or is not immediately after, the foot or end of the will. or

(b) that a blank space intervenes between the concluding word of the will and the signature, or

(c) that the signature is placed among the words of the *testimonium* clause, or of the clause of attestation, or follows, or is after, or under the clause of attestation, either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names, of the subscribing witnesses, or

(d) that the signature is on a side or page, or other portion of the paper or papers containing the will whereon no clause or paragraph or disposing part of the will is written above the signature, or

(e) that there appears to be sufficient space on or at the bottom of the preceding side or page or other portion of the same paper on which the will is written to contain the signature, and the enumeration of the above circumstances shall not restrict the generality of the above enactment, but no signature shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature was made. R. S., c. 89, s. 5.

8. Appointment by will to be executed as will.—No appointment made by will in exercise of any power shall be valid unless the same is executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power shall be executed with some additional or other form of execution or solemnity. R. S., c. 89, s. 9.

9. Soldier or sailor, will by.—Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal property in the manner in which he might have done before the twenty-seventh day of March, A. D., 1840. R. S., c. 89, s. 8.

10. Due execution sufficient publication.— Every will executed in manner hereinbefore required shall be valid without any other publication thereof. R.S., c. 89, s. 10.

11. Incompetency of witnesses.— No will shall be invalid on account of the incompetency of the witnesses thereto to prove its execution. R.S., c. 89, s. 11.

12. Devise, &c., to attesting witness.— Every devise, bequest, or appointment, other than a charge or direction for payment of debts, to an attesting witness of the will, or to the wife or husband of such witness, shall be void; and such witness shall be admitted to prove the execution of the will or the validity or invalidity thereof: Provided that where there are two competent witnesses to the will beside such person, such devise, bequest, or appointment shall not be void. R.S., c. 89, s. 12.

13. Charge of debts on estate not to disqualify witness.— If by any will any real or personal property is charged with any debt, and any creditor, or the wife or husband of any creditor, whose debt is so charged attests the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof. R.S., c. 89, s. 13.

14. Executor may be witness.— No person shall on account of his being an executor of a will be incompetent to prove the execution of such will, or to prove the validity or invalidity thereof. R.S., c. 89, s. 14.

15. Will of married woman, declaration required.— (1.) No will of any married woman under which her husband takes a greater interest in her property than he would be entitled to in case of her dying intestate shall be valid, unless the same is executed when such husband is not present, and at the time of the execution thereof such married woman declares in the presence of the witnesses thereto that she executes the same of her free will and without any fear, threat or compulsion or other undue influence of, from or by her husband.

(2). Requirements as to declaration.— No such will shall be valid or admitted to probate unless,—

(a) such declaration, in addition to being made in the presence of the witnesses to the will, is made before,

- (i) a judge of the Supreme Court;
- (ii) a judge of a county court;
- (iii) a barrister of the Supreme Court;
- (iv) a notary public;
- (v) a commissioner for taking affidavits; or
- (vi) a justice of the peace,

and the functionary before whom such declaration is made appends to such will a certificate that such declaration was made, which certificate may be in the form A, in the schedule to this Chapter, or to the like effect; or

(b) it is proved by evidence under oath upon the application to admit the will to probate that such declaration was made in the presence of such witnesses. 1898, c. 23, s. 20 (2.)

16. Execution of will without the province.— Every will made out of the province (whatever was the domicile of the testator at the time of making the same, or at the time of his death) shall, as regards personal property, be held to be well executed for the

purpose of being admitted to probate in Nova Scotia, if the same is made according to the forms required, either,—

- (a) by the law of this province; or
- (b) by the law of the place where the same was made; or
- (c) by the law of the place where the testator was domiciled when the same was made, or
- (d) by the law then in force in the place where he had his domicile of origin. R. S., c. 89, s. 6.

REVOCATION AND ALTERATION.

17. Will not revoked by change of domicile.—No will shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same. R.S., c. 89, s. 7.

18. Marriage to revoke will except in certain cases.—Every will shall be revoked by the marriage of the testator, except,—

- (a) where it is declared in the will that the same is made in contemplation of such marriage;
- (b) where the wife or husband of the testator elects to take under the will by an instrument in writing signed by such wife or husband and filed, within one year after the testator's death, in the court of probate in which probate of such will is taken or sought to be taken; or

- (c) where the will is made in exercise of a power of appointment, when the real or personal property thereby appointed would not in default of such appointment pass to the heir, executor or administrator, or the person entitled as next of kin. R.S., c. 89, s. 15.

19. Presumption of alteration in circumstances not to revoke.—No will shall be revoked by any presumption of an intention to revoke the same on the ground of an alteration in circumstances. R.S., c. 89, s. 16.

20. How revocation effected.—No will or codicil or any part thereof shall be revoked otherwise than,—

- (a) by marriage as hereinbefore provided; or
- (b) by another will or codicil executed in manner by this Chapter required; or
- (c) by some writing declaring an intention to revoke the same, and executed in the manner in which a will is by this Chapter required to be executed; or
- (d) by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same. R. S., c. 89, s. 17.

21. Obliteration, &c., effect of.—No cancelling by drawing lines across a will or any part thereof, and no obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect except so far as the words or the effect of the will before such cancelling or alteration are not apparent, unless such cancelling or alteration is executed in the manner by this Chapter required for the execution of the will; but the will, with such cancellation or alteration as part thereof, shall be deemed to be duly executed if the signature of the testator, made by himself or some other person in his presence, and by his direction, and the subscription of the witnesses, is made in the margin or on some other part of the will opposite or near to such cancellation or

alteration, or at the foot or end of or opposite to a memorandum referring to such cancellation or alteration, and written at the end or some other part of the will. R.S., c. 89, s. 18.

22. Revoked will how revived.—No will or codicil or any part thereof which has been in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner in this Chapter required, and showing an intention to revive the same; and when any will or codicil which has been partly revoked and afterwards wholly revoked, is revived, such revival shall not extend to so much thereof as was revoked before the revocation of the whole thereof, unless an intention to the contrary is shown. R. S., c. 89, s. 19.

OPERATION AND CONSTRUCTION.

23. Conveyances, &c., how far they shall affect will previously made.—No conveyance or other act made or done subsequently to the execution of a will of any real or personal property therein comprised, except an act by which such will is revoked as in this Chapter mentioned, shall prevent the operation of the will with respect to such estate or interest in such real personal property as the testator has power to dispose of by will at the time of his death. R. S., c. 89, s. 20.

24. Will to be construed as if made immediately before death.—(1) Every will shall be construed, with reference to the real and personal property comprised in it to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

(2.) This section shall apply to the will of a married woman made during coverture, whether she is or is not possessed of or entitled to any separate property at the time of making it, and such will shall not require to be re-executed or re-published after the death of her husband. R.S., c. 89, s. 21; 1898, c. 22, s. 26.

25. Lapsed legacies included in residuary devise.—Unless a contrary intention appears by the will, such real property or interest therein as is comprised or intended to be comprised in any devise in such will contained which fails or becomes void by reason of the death of the devisee in the lifetime of the testator, or by reason of the devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, if any contained in such will. R. S., c. 89, s. 22.

26. Rules for construing devise of real property in certain cases.—A devise of the land of the testator or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estate of the testator, or his leasehold estates or any of them to which such description extends, as the case may be, as well as freehold estates; unless a contrary intention appears by the will. R. S., c. 89, s. 23.

27. General devise, how construed.—A general devise or bequest of the real or personal property of the testator, or of the real or personal property of the testator in any place, or in the possession of any person, mentioned in his will, or otherwise described in a general manner, shall be construed to include any real or personal

property, or any real or personal property to which such description extends, as the case may be, which he has power to appoint in any manner he thinks proper, and shall operate as an execution of such power, unless a contrary intention appears by the will. R.S., c. 89, s. 24.

28. Devise of real property without words of limitation.—

Where any real property is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real property, unless a contrary intention appears by the will. R.S., c. 89, s. 25.

29. Words "die without issue," &c., how construed.—

In any devise or bequest of real or personal property the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the lifetime, or at the time of the death, of such person, and not an indefinite failure of his issue; unless a contrary intention appears by the will by reason of such person having a prior estate tail or of a preceding gift being, without any implication arising from such words, a limitation of an estate to such person or issue, or otherwise. But this Chapter shall not extend to cases where such words import, if no issue described in a preceding gift are born, or if there are no issue who live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue. R.S., c. 89, s. 26.

30 Devise of real property to executor or trustee, how

construed.—Where any real property is devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real property; unless a definite term of years, absolute or determinable, or an estate of freehold, is thereby given to him expressly or by implication. R. S., c. 89, s. 27.

31. Devise of estate tail, not to lapse if devisee has child-

ren.—Where any person to whom any real property is devised for an estate tail, or for an estate in *quasi* entail, dies in the lifetime of the testator leaving issue who would be inheritable under such entail if such estate existed, and any such issue are living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator; unless a contrary intention appears by the will. R. S., c. 89, s. 28.

32. Devise to testator's children not to lapse if they have

issue living.—Where any person, being a child or other issue of the testator, to whom any real or personal property is devised or bequeathed for any estate or interest not determinable at or before the death of such person, dies in the lifetime of the testator leaving issue, and any such issue of such person are living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator; unless a contrary intention appears by the will. R.S., c. 89, s. 29.

MISCELLANEOUS.

33. Executors may carry out contract of testator.—

testator at the time of his death was liable to perform any contract for the sale and conveyance of any real or personal property, the executors of his will shall, notwithstanding any devise or bequest of the real or personal property to which such contract refers, be deemed trustees thereof so far as is necessary for performing such contract, and shall have power to execute the necessary conveyances for the performance thereof; and the executors shall hold the purchase money subject to such uses and purposes as are in such will expressed respecting such real or personal property or such purchase money, or otherwise, for the use and benefit of the estate of the testator. R. S., c. 89, s. 21, (part.)

34. Suppressing will, penalty for.—Every person who suppresses any will shall, after thirty days from the time when such will should first have been made public, be liable to a penalty of twenty dollars for each month during which such suppression continues. R. S., c. 89, s. 33.

SCHEDULE.

(A)

(Sect. 15.)

CERTIFICATE OF MARRIED WOMAN'S ACKNOWLEDGMENT OF
EXECUTION OF WILL.

Province of Nova Scotia,
County of.....SS.

Be it remembered that on this.... day of.... A.D., 19.. ,before me, the subscriber... ,personally came and appeared C. D., of ...wife of A. B., of... , the testatrix mentioned in the foregoing (or within- will, who having been by me examined separate and apart from her said husband, did declare and acknowledge that she executed the same of her free will, and without any fear, threat, compulsion, or other undue influence of, from or by her said husband.

QUEBEC.

CIVIL CODE OF LOWER CANADA.

BOOK III. TITLE SECOND.

OF GIFTS *INTER VIVOS* AND BY WILL.

CHAPTER FIRST.

GENERAL PROVISIONS.

754. A person cannot dispose of his property by gratuitous title, otherwise than by gift *inter vivos* or by will. C. N. 893.

755. Gift *inter vivos* is an act by which the donor divests himself, by gratuitous title, of the ownership of a thing, in favor of the donee, whose acceptance is requisite, and renders the contract perfect. This acceptance makes it irrevocable, saving the cases provided for by law or a valid resolute condition. C. N. 894.

756. A will is an act of gift in contemplation of death by means of which the testator, without the intervention of the person benefited, makes a free disposal of the whole or of a part of his property, to take effect only after his death, with power at all times to revoke it. Any acceptance of it purporting to be made in his lifetime is of no effect. C. N. 895.

757. Certain gifts may be made irrevocably *inter vivos* in a contract of marriage, to take effect, however, only after death. They partake of gifts *inter vivos* and of wills and are treated of specially in the sixth section of the second chapter of this title. C. N. 897; C. C. 597.

758. Every gift made so as to take effect only after death, which is not valid as a will, or as permitted in a contract of marriage, is void. C. N. 943, 947.

759. The prohibitions and restrictions as to the capacity for contracting, alienating or acquiring, established elsewhere in this code, apply to gifts *inter vivos* and to wills, with the modifications contained in the present title.

760. Gifts *inter vivos* or by will may be conditional.

An impossible condition, or one contrary to good morals, to law, or to public order, upon which a gift *inter vivos* depends, is void and renders void the disposition itself, as in other contracts. In a will such a condition is considered as not written, and does not annul the disposition. C. N. 900, 1172; C. C. 13, 831.

CHAPTER SECOND.

OF GIFTS *inter vivos*.

(Not Printed).

CHAPTER THIRD.

OF WILLS.

SECTION I.

Of the Capacity to give and to receive by will.

831. Every person of full age, of sound intellect, and capable of alienating his property, may dispose of it freely by will, without distinction as to its origin or nature, either in favor of his consort, or of one or more of his children, or of any other person capable of acquiring and possessing, and without reserve, restriction, or limitation; saving the prohibitions, restrictions, and causes of nullity mentioned in this code, and all dispositions and conditions contrary to public order or good morals. C. N. 901; C. C. 13, 760.

832. The capacity of married women to dispose of property by will is established in the first book of this code, in the title *Of Marriage*. C. N. 905; C. C. 184.

833. Minors, even of the age of twenty years and over, whether emancipated or not, are incapable of bequeathing any part of their property. C. N. 903, 904.

834. Tutors and curators cannot bequeath property for the persons under their control, either alone, or conjointly with such persons.

Persons interdicted for imbecility, insanity or madness cannot dispose of property by will. The will of a prodigal made subsequently to his interdiction may be confirmed or not according to circumstances and the nature of the dispositions.

A person to whom an adviser has been judicially appointed, whether at his own request or upon an application for his interdiction, may validly dispose of property by will. C. N. 901.

835. The capacity of the testator is considered relatively to the time of making his will; nevertheless a will made previously to a condemnation from which civil death results, is without effect if the 36, s. 2.

836. Corporations and persons in mortmain can only receive by will such property as they may legally possess.—C. C. 366.

837. Minors and interdicted or insane persons, though incapable of bequeathing, may receive by will.—C. N. 906. testator die while he is under the effect of such condemnation. C. C.

838. The capacity to receive by will is considered relatively to the time of the death of the testator; in legacies the effect of which remains suspended after the death of the testator, whether in consequence of a condition or in the case of a legacy to children not yet born, or of a substitution, this capacity is considered relatively to the time at which the right comes into effect.

Persons benefited by a will need not be in existence at the time of such will, nor be absolutely described or identified therein: It is sufficient that at the time of the death of the testator they be in existence, or that they be then conceived and subsequently born viable, and be clearly known to be the persons intended by the testator. Even in the case of suspended legacies already referred to in this article, it suffices that the legatee be alive, or conceived, subject to the condition of being afterwards born viable, and that he prove to be the person indicated, at the time the legacy takes effect in his favor. C. N. 906; C. C. 608, 900 et s.

839. As regards testamentary dispositions, the legal presumptions of undue influence and want of will, arising from the relation of priest or minister, physician, advocate or attorney, in which the legatee stands toward the testator, have been destroyed by the introduction of the absolute freedom of disposing of property by will. Presumptions in these cases are to be established as in all others.—C. N. 909; C. C. 769.

SECTION II.

Of the Form of Wills.

840. Dispositions in contemplation of death made of a person's whole property, or of part thereof, in legal form by will or codicil, and whether they are expressed in the terms of an appointment of heir, of a gift, of a legacy, or in other terms indicating the intentions of the testator, take effect according to the rules hereinafter laid down, as universal legacies, legacies by general title, or as particular legacies. C. N. 967.

841. Two or more persons cannot make a will by one and the same act, whether in favor of third persons or in favor of one another. C. N. 968.

842. Wills may be made:—

1. In notarial or authentic form;
2. In the form required for holograph wills;
3. In writing and in presence of witnesses, in the form derived from the laws of England. C. N. 969.

843. Wills in authentic form cannot be dictated by signs. notaries or before a notary and two witnesses; the testator, in their presence and with them, signs the will or declares that he cannot do so, after it has been read to him by one of the notaries in presence of the other or by the notary in presence of the witnesses. Mention is made in the will of the observance of the formalities. C. N. 972; C. C. 1208.

844. Authentic wills must be made as originals remaining with the notary.

The witnesses must be named and described in the will. They must be of the male sex, of full age, and must not be civilly dead, nor sentenced to an infamous punishment.

Aliens may serve as witnesses.

The clerks and servants of the notaries cannot.

The date and place of its execution must be stated in the will. C. N. 971, 972, 975, 880; C. C. 36, s. 4.

845. A will cannot be executed before notaries who are related or allied to the testator or to each other, in the direct line, or in the degree of brothers, uncles, or nephews. The witnesses, however,

may be related or allied to the testator, to the notary, or to one another.

846. Legacies made in favor of the notaries or witnesses, or to the wife of any such notary or witness, or to any relation of such notary or witness, in the first degree, are void, but do not annul the other provisions of the will.

Testamentary executors who are neither benefited nor compensated by the will may serve as witnesses to its execution.

847. Wills in authentic form cannot be dictated by signs.

Deaf mutes and others who cannot declare their will by word of mouth, may do so if they are sufficiently educated, by means of instructions written by themselves and handed to the notary, before or at the execution of the will.

Deaf mutes and such persons as cannot hear the will read, must read it themselves, and aloud, as regard those who are only deaf.

A written declaration that the deed contains the will of the testator and is prepared in accordance with his instructions, may be substituted for the same declaration by word of mouth, when it is required.

Mention must be made of the observance of those exceptional formalities and of their cause.

If the deaf mutes and others cannot avail themselves of the provisions of this article, they cannot make wills in the authentic form.

848. Further and special provisions exist for the district of Gaspé, to remedy the want of notaries for the execution of wills as well as of other acts.

Saving these provisions of a local nature, ministers of religion cannot replace notaries in the execution of wills; neither can they serve otherwise than as ordinary witnesses.

849. Wills made in Lower Canada or elsewhere by military men in active service out of garrison, or by mariners during voyages, on board ship or in hospital, which would be valid in England as regards their form, are likewise valid in Lower Canada. C. N. 981.

850. Holograph wills must be wholly written and signed by the testator, and require neither notaries nor witnesses. They are subject to no particular form.

Deaf mutes who are sufficiently educated, may make holograph wills, in the same manner as other persons who know how to write. C. N. 970.

851. Wills made in the form derived from the laws of England whether they affect moveable or immoveable property, must be in writing and signed at the end with the signature or mark of the testator, made by himself or by another person for him in his presence and under his express direction, which signature is then or subsequently acknowledged by the testator as having been subscribed by him to his will then produced, in presence of at least two competent witnesses together, who attest and sign the will immediately, in presence of the testator and at his request.

Females may serve as attesting witnesses and the rules concerning the competency of witnesses are the same in all other respects as for wills in authentic form.

852. Deaf mutes capable of understanding the meaning of a will and the manner of making one, and all other persons, whether literate or not, whose infirmity has not rendered them incapable of so understanding or of expressing their intentions, may dispose of property by will in the form derived from the laws of England pro-

vided their intention and the acknowledgment of their signature or mark are manifested in presence of witnesses.

853. In wills made in the last mentioned form, legacies made to any of the witnesses or to the husband or wife of any such witness or to any relations of such witness, in the first degree, are void, but do not annul the other provisions of the will.

The competency of testamentary executors to serve as witnesses to such wills is subject to the same rules as in wills in authentic form.

854. In holograph wills, and in wills made in the form derived from the laws of England, whatever comes after the signature of the testator is looked upon as a new act, which in the former case must likewise be written and signed by the testator or signed only in the latter. In this latter case the attestation of the witnesses must follow each signature of the testator or come after the last as witnessing the whole of the will preceding such signature.

In wills made in either of the forms mentioned in this article, date and place need not be mentioned on pain of nullity. The judges or courts must decide in each case whether their absence creates any presumption against the will or renders uncertain any of its particular provisions.

The will need not be signed upon each page.

855. The formalities to which wills are subjected by the provisions of the present section must be observed on pain of nullity, unless there is some particular exception on the subject.

Nevertheless, wills purporting to be made in one form, which are void as such in consequence of the inobservance of some formality, may be valid as made in another form, if they contain all the requisites of the latter. C. N. 1101; C. C. 1221.

SECTION III.

Of the Probate and Proof of Wills.

856. The originals and legally certified copies of wills made in authentic form make proof in the same manner as other authentic writings.

857. Holograph wills and those made in the form derived from the laws of England, must be presented for probate to the court exercising superior original jurisdiction in the district in which the deceased had his domicile, or, if he had none, in the district in which he died, or to one of the judges of such court, or to the prothonotary of the district. The court, or judge, or the prothonotary, receives the depositions in writing and under oath of witnesses competent to give evidence, and these depositions remain affixed to the original will, together with the judgment, if it have been rendered out of court, or a certified copy of it, if it have been rendered in court. Parties interested may then obtain certified copies of the will, the proof and the judgment, which copies are authentic and give effect to the will until it is set aside upon contestation.

If the original of the will be deposited with a notary, the court or judge or the prothonotary, causes such original to be delivered up. C.N. 1007; C.C.P. 1367, 1430.

858. The heir of the deceased need not be summoned to the probate thus made of the will, except it is so ordered in particular cases.

The functionary who takes the probate takes cognizance of all that relates to the will.

The probate of wills does not prevent their contestation by persons interested.

859. The acknowledgment of a will by the heir or by any interested person has its effect against him, as regards his right to contest its validity subsequently, but does not prevent the probate and the depositing of the will with the prothonotary in the proper manner, in so far as concerns other parties interested.

860. When the minute or the original of a will has been lost or destroyed by a fortuitous event after the death of the testator, or has been withheld without collusion, by an adversary or by a third party, the will may be proved in the manner provided in such cases for other acts and writings in the title *Of Obligations*.

If the will have been destroyed or lost before the death of the testator without the fact ever having come to his knowledge, it may be proved in the same manner as if the accident had occurred after his death.

If the testator knew of the destruction or loss of the will and did not provide for such destruction or loss, he is held to have revoked it, unless he subsequently manifest his intention of maintaining its provisions. C. C. 892, s. 3, 1233, s. 6.

861. In cases where, in conformity with the preceding article, a non-produced will may be judicially proved, a probate of it may also be obtained, upon petition to that effect and positive proof both of the facts which justify such a proceeding and of the contents of the will. In such case probate of the will is held to be established according to the proof deemed sufficient, and to whatever modifications may be found in the judgment.

862. The sufficiency of one witness applies to the probate and proof of wills, even of those lost or destroyed if the court or judge be satisfied. C. C. P. 312.

SECTION IV.

Of Legacies.

§ 1.—*Of legacies in general.*

863. Testamentary dispositions of property constitute legacies, either universal, or by general title, or by particular title.—C. N. 1102; C. C. 873.

864. The property of a deceased person which is not disposed of by will, or concerning which the disposition of his will are wholly without effect, remains in his abintestate succession, and passes to his lawful heirs. C. C. 597.

865. When a legacy made subject to another legacy lapses, from a cause dependent upon the legatee, the legacy to which it is thus subject does not therefore lapse, but is deemed to form a distinct disposition, charged upon the heir or legatee to whom the lapsed legacy accrues. C. C. 900 *et. s.*

866. The legatee may always repudiate the legacy so long as he has not accepted it. The acceptance may be either express or implied. Acceptance may be implied from the same acts as in abintestate succession. The right to accept a legacy, not previously repudiated, passes to the heirs and other legal representatives of the legatee, in the same manner as heritable rights derived from the law alone. C. C. 645 *et. s.*

867. Tutors and curators may accept legacies, subject to the same restrictions as in the case of abintestate successions.

The capacity of minors and of persons interdicted for prodi-gality, to accept legacies for themselves, is governed by the rules established for the acceptance of successions C. C. 301, 643.

868. Accretion takes place in favor of the legatees in case of lapsed legacies, when such legacies are made in favor of several persons jointly.

They are held to be so made when they are created by one and the same disposition and the testator has not assigned the share of each co-legatee in the thing bequeathed. Directions given to divide the thing jointly disposed of into equal aliquot shares, do not prevent accretion from taking place.

The legacy is also presumed to be made jointly when a thing which cannot be divided without deterioration is bequeathed by the same act to several persons separately.

The right to accretion applies also to gifts *inter vivos* made in favor of several persons jointly, when some of the donees do not accept.—C. N. 1044, 1045; C. C. *et. s.*, 964.

869. A testator may name legatees who shall be merely fiduciary or simply trustees for charitable or other lawful purposes within the limits permitted by law; he may also deliver over his property for the same objects to his testamentary executors, or effect such purposes by means of charges imposed upon his heirs or legatees.

870. Payment made in good faith to the ostensible heir, or to a legatee who is in possession of the succession, is valid against the heirs or legatees who present themselves afterwards; saving the recourse of the latter against him who has received without a right to do so.—C. C. 1145.

871. Fruits and interest arising from the thing bequeathed accrue to the benefit of the legatee from the time of the death of the testator, when the latter has expressly declared in the will his intention to that effect.

Life rents or pensions, bequeathed by way of maintenance, also begin from the date of the testator's death.

In all other cases, fruits and interest do not accrue until they are judicially demanded, or until the debtor of the legacy is put in default.—C. N. 1015.

872. The rules concerning legacies and the presumptions of the testator's intention, as well as the meaning ascribed to certain terms, give way to the formal or otherwise sufficient expression of such intention, given in another sense or with a view to different effects. The testator may derogate from these rules in all that is not contrary to public order, to good morals, to any law containing a prohibition or some other applicable declaration of nullity, or to the rights of creditors and third persons.—C. C. 13.

§ 2.—Of universal legacies and legacies by general title.

873. Universal legacies are testamentary dispositions by which the testator gives to one or to several persons the whole of the property he leaves at his death.

Legacies are only by general title when the testator bequeaths an aliquot part of his property, as a half, a third, or a universality, such as the whole of his moveable or immoveable property, or the

whole of the private property excluded from the matrimonial community, or analiquot part of any such whole.

All other legacies are by particular title.

The exception of particular things, whatever may be their number or value, does not destroy the character of universal legacies, or of legacies by general title.—C. N. 1003, 1010.

874. The legatee has the same delays as the heir to make an inventory and to deliberate. If he have not assumed his quality within the delays, and he afterwards sued for the debts or charges attached to his legacy, he is not freed from the costs by his renunciation, any more than the heir would be.—C. C. 664 *et s.*; C. C. P. 177, s. 1.

875. The liability of a universal legatee, or of a legatee by general title, or by particular title, for the debts and hypothecs, is explained in the title *Of Successions* and in certain respects, in the present section, and also in the title *Of usufruct*. C. C. 472 *et s.*, 735 *et s.*

876. The legatee of a usufruct bequeathed as a universal legacy, or as a legacy by general title, is personally liable towards the creditors for the debts of the succession even for the principal, in proportion to what he receives; he is hypothecarily liable for whatever claims affect the immoveables included in his share, as any other legatee by the same title, and with the same recourse. The valuation is made proportionately between him and the proprietor in the manner and according to the rules set forth in article 474.—C. C. 472 *et s.*

877. A testator may change among his heirs and legatees the manner and proportions in which the law holds them liable for the payment of the debts and legacies, without prejudice to the personal or hypothecary action of the creditors against those who are legally subject to the right claimed, and saving the recourse of the latter against those upon whom the testator imposed the obligation.

878. Universal legatees and legatees by general title cannot, after acceptance, free themselves from personal liability for the debts and legacies imposed upon them by law or by the will, without having obtained benefit of inventory; they are in this respect, and in all that concerns their administration, the rendering of their account and that discharge from liability, subject to the same rules as the heir, and to the obligation of registering.

Legatees by particular title upon whom the will imposes debts and charges of uncertain extent, may, in the same manner as the heir and universal legatee, accept only under benefit of inventory. C. C. 660 *et s.*; C. C. P. 1405 *et s.*

879. The creditors of a succession have a right to the separation of property against a legatee liable for a debt, in the same manner as against an heir, for the portion in which he is liable. C. C. 743, 1990, 2106.

§ 3.—*Of legacies by particular title.*

880. The debts of a testator must in all cases be paid in preference to his legacies.

Particular legacies are paid by the heirs, or universal legatees, or legatees by general title, each in the proportion for which he is liable, as in the contribution to the debts, and the legatee has a right to demand the separation of property.

If the legacy be imposed upon one particular heir or legatee, the personal action of the legatee by particular title does not extend to the others.

The right to a legacy does not carry with it a hypothec upon the property of the succession, but the testator, whatever may be the form of the will, may secure it by a special hypothecation requiring, as regards the rights of third parties, that the will be registered.—C. N. 1017; C. C. 472, 743, 2110 *et s.*

881. The bequest of a thing which does not belong to the testator, whether he was aware or not of another's right to it, is void even when the thing belongs to the heir or legatee charged with the payment of it.

The legacy is, however, valid, and is equivalent to the charge of procuring the thing or of paying its value, if such appear to have been the intention of the testator. In such case, if the thing bequeathed belong to the heir or the legatee charged with the payment of it, whether the fact was known or not to the testator, the particular legatee is seized of the ownership of his legacy.—C. N. 1021.

882. If the thing bequeathed belonged to the testator for a part only, he is presumed to have bequeathed only the part which belonged to him even when the remainder belongs to the heir or principal legatee, unless his intention to the contrary is manifest.

The same rule applies to the bequest made by one of the co-heirs of a thing belonging to the community; saving the right of the legatee to the whole of the thing bequeathed under the circumstances enumerated in the title concerning marriage convenants, and generally in the case of the following article.—C. C. 1293.

883. If the testator since the making of the will have become, wholly or in part, owner of the thing bequeathed, the legacy is valid as regards whatever remains in his succession, notwithstanding the provisions contained in the preceding article; excepting the case in which the thing remains in the succession only by reason of the nullity of a subsequent voluntary alienation of it by the testator.—C. N. 1021; C. C. 897.

884. When a legacy by particular title comprises a universality of assets and liabilities, as for example a certain succession, the legatee of such universality is held personally and alone for the debts connected with it, without prejudice to the rights of the creditors against the heirs and universal legatees or legatees by general title, who have their recourse against the particular legatee.

885. In the case of insufficiency of the property of the succession or of the heir or legatee liable for the payment, the legacies entitled to preference are paid first, and the remainder is then divided rateably among the other legatees in proportion to the value of their respective legacies. Legatees of a certain and determinate object take it without being bound to contribute to the payment of the other legacies which have no preference over theirs.

886. To obtain the reduction of particular legacies, the creditors must first have discussed the heir or legatee who is personally bound, and have availed themselves in time of the right to separation of property.

The creditors exercise this reduction against each of the particular legatees for a share only, in proportion to the value of his legacy, but the particular legatees may free themselves by giving up the particular legacies or their value.

887. Creditors of the succession, in the case of reduction of particular legacies, have a preferable right to the thing bequeathed over the creditors of the legatee, as in the case of separation of property.

A particular legatee suffering such reduction has his recourse against the heirs or legatees who are personally liable, and is substituted by law in all the rights of the creditor thus paid.

888. When an immoveable bequeathed has been increased by further acquisitions of property, the property thus acquired, even if it be contiguous, is not deemed to form part of the legacy, unless from its destination and the circumstances it may be presumed that the testator intended it to form a mere dependency, constituting with the immoveable bequeathed but one and the same property.

Buildings embellishments and improvements are deemed to be adjuncts of the thing bequeathed.—C. N. 1019.

889. If before or since the will, the immoveable bequeathed have been hypothecated for a debt of the testator remaining still due, or even for the debt of a third person whether it was known or not to the testator, the heir, or the universal legatee, or the legatee by general title is not bound to discharge the hypothec, unless he is obliged to do so by the will. A usufruct established upon the thing bequeathed is also borne without recourse by the particular legatee. The same rule applies to servitudes.

If, however, the hypothecary debt of a third person, of which the testator was ignorant, affect at the same time the particular legacy and the property remaining in the succession, the benefit of division may reciprocally be claimed.—C. N. 1020; C. C. 741.

890. A legacy made in favor of a creditor is not deemed to be in compensation of his claim, nor that in favor of a servant in compensation of his wages.—C. N. 1023.

§ 4.—*Of the seizing of legatees.*

891. Legatees by whatever title, are by the death of the testator, or by the event which gives effect to the legacy, seized of the right to the thing bequeathed, in the condition in which it then is, together with all its necessary dependencies, and with the right to obtain payment, and to prosecute all claims resulting from the legacy without being obliged to obtain legal delivery.

SECTION V.

Of the Revocation and Lapse of Wills and Legacies.

892. Wills and legacies cannot be revoked by the testator except:—

1. By means of a subsequent will revoking them either expressly or by the nature of its dispositions;

2. By means of a notarial or other written act, by which a change of intention is expressly stated;

3. By means of the destruction, tearing or erasure of the holograph will, or of that made in the form derived from the laws of England, deliberately effected by him or by his order, with the intention of revoking it; and in some cases by reason of the destruction or loss of the will by a fortuitous event becoming known to him, as explained in the third section of the present chapter;

4. By his alienation of the thing bequeathed.—C. N. 1035; C. C. 756, 860.

893. The revocation of a will or of a legacy may also be demanded:—

1. On the ground of the complicity of the legatee in the death of the testator, or by reason of grievous injury done to his memory, in the same manner as in the case of legal succession, or if the legatee hindered the revocation or modification of the will;

2. By reason of the resolute condition;—Without prejudice to the causes for which the validity of the will or legacy may be impugned.

The subsequent birth of children to the testator does not affect the revocation.

Enmity springing up between him and the legatee does not establish a presumption of revocation.—C. N. 1046, 1047; C. C. 610.

894. Subsequent wills which do not revoke the preceding ones in an express manner, annul only such dispositions therein as are inconsistent with or contrary to those contained in the later wills.—C. N. 1036.

895. A revocation contained in a subsequent will retains its full effect, although such will should remain inoperative by the reason of the incapacity of the legatee or of his refusal to accept.

A revocation contained in a will which is void by reason of informality, is also void.—C. N. 1037; C. C. 1221.

896. In the absence of express dispositions, the circumstances and the indications of the intention of the testator determine whether, upon the revocation of a will which revokes another will, the former will revives.

897. Every alienation by the testator of the right of ownership in the thing bequeathed, even in a case of necessity, or by forced means, or with right of redemption reserved, or by exchange carries with it, unless he has otherwise provided, a revocation of the will or legacy for all that has been thus disposed of, even though, if it were voluntary, the alienation be void.

The revocation subsists although the thing should afterwards have returned into the hands of the testator, unless he appears to have intended the contrary.—C. N. 1038; C. C. 883.

898. A person cannot, otherwise than by the effect of gifts in contemplation of death made by contract of marriage, forego his right to dispose of his property by will or by gift in contemplation of death, or to revoke his testamentary dispositions. Nor can a person subject the validity of any future will to formalities, expressions or signs not required by law, or to other derogatory clauses.—C. C. 823.

899. Heirs cannot be excluded from successions, unless the act excluding them is clothed with all the formalities of a will.

900. Every testamentary disposition lapses if the person in whose favor it is made do not survive the testator.—C. N. 1039; C. C. 838, 865, 868.

901. Every testamentary disposition made under a condition which depends on an uncertain event, lapses if the legatee die before the fulfilment of the condition.—C. N. 1040.

902. Conditions which are intended by the testator to suspend

only the execution of a disposition, do not prevent the legatee from having an acquired right transmissible to his heirs.—C. N. 1041.

903. A legacy lapses if the thing bequeathed perish totally during the lifetime of the testator.

The loss of a thing bequeathed which happens after the death of the testator, falls upon the legatee, except cases wherein the heir or other holder may be responsible according to the rules applicable generally to things which form the subject of obligations.—C. N. 1042.

904. A testamentary disposition lapses when the legatee repudiates it or is incapable of receiving under it.—C. N. 1043.

THE BANK ACT.

R.²S. C., 1906, CHAP. 29

ANNOTATED

REVISED STATUTES OF CANADA, 1906.

CHAPTER 29.

AN ACT RESPECTING BANKS AND BANKING.

SHORT TITLE.

1. This Act may be cited as the Bank Act, 53 V., c. 31, s. 1.

For review of previous banking legislation, see Falconbridge on Banking and Bills of Exchange, chap. I.

(1) *Cushing vs. Dupuy*, L. R., 5 A. C. 409 (1880).

The British North America Act of 1867, s. 91, in assigning to the Dominion Parliament the subjects of bankruptcy and insolvency intended to confer and did confer on it legislative power to interfere with property, civil rights and procedure within the Provinces, so far as these latter might be affected by a general law relating to those subjects. Consequently the Dominion enactment, 40 Vict., ch. 41, s. 28, amending the Canadian Insolvent Act, and providing that the judgment of the Court of Appeal in matters of insolvency should be final, i. e., not subject to the appeal as of right to His Majesty in Council allowed by the Civil Procedure Code, Article 1178, is within the competence of the Canadian Parliament, and does not infringe the exclusive powers given to the Provincial legislatures by sec. 92 of the Imperial Statute. Neither does it infringe the Queen's prerogative, for it only limits the right of appeal as given by the Code.

(2) *Merchants' Bank vs. Smith* (1883), 8 S. C. R. 512.

Sections 46, 47 and 48 of 34 Vic., ch. 5 (D), are *intra vires* of the Dominion Parliament.

(3) *Quirt vs. The Queen* (1891), 19 S. C. R. 510.

In 1886 the Bank of Upper Canada became insolvent, and assigned all its property and assets to trustees. By 31 V., c. 17, the Dominion Parliament incorporated the said trustees, giving them authority to carry on the business of the bank so far as was necessary for winding up the same. By 33 V., c. 40, all the property of the bank vested in the trustees was transferred to the Dominion Government, who became seized of all the powers of the trustees.

Held, that these acts were *intra vires* of the Dominion Parliament.

The authority to pass the said acts cannot be referred to the legislative jurisdiction of Parliament over "banking and the incorporation of banks," but to that over "bankruptcy and insolvency" only.

(4) *Tennant vs. Union Bank of Canada* (1894), A. C. 31.

The words "Banking, Incorporation of Banks and the Issue of Paper Money" in section 91 of the British North America Act, 1867, cover the case of warehouse receipts taken as security by a bank in the course of the business of banking. Notwithstanding section 92 of the same Act, the Dominion Parliament has power to legislate with respect to such securities, though with the effect of modifying the law of the Province in relation thereto; e.g., the provisions of sec. 88 of the Bank Act.

(5) *Bank of Toronto vs. Lambe* (1887), 12 App. Cas. 575.

A provincial legislature may impose a tax upon banks which carry on business within the province, varying in amount with their paid-up capital and with the number of their offices, whether their chief place of business is within the province or not.

(6) *Windsor vs. Commercial Bank* (1882), 3 Cart. 377, 3 Russ. and Geld 420.

A provincial legislature may impose a tax on the Dominion notes held by a bank in the province as part of its cash reserve under sec. 60.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires:—

(a) **Bank.**—"Bank" means any bank to which this Act applies;

(b) **Minister.**—"Minister" means the Minister of Finance and Receiver General;

(c) **Association.**—"Association" means the Canadian Bankers' Association, incorporated by the Act passed in the session held in the sixty-third and sixty-fourth years of Her late Majesty's reign, chapter ninety-three, intituled *An Act to incorporate the Canadian Bankers' Association*;

(d) **Curator.**—"Curator" means any person appointed under the authority of this Act by the Canadian Bankers' Association to supervise the affairs of any bank which has suspended payment in specie or Dominion notes of any of its liabilities as they accrue;

(e) **Circulation Fund.**—"Circulation Fund" means the fund heretofore established and continued by the authority of this Act under the name of the Bank Circulation Redemption Fund;

(f) **Goods, Wares and Merchandise.**—"Goods, wares and merchandise" includes in addition to the things usually understood thereby, timber, deals, boards, staves, saw-logs and other lumber, petroleum, crude oil, and all agricultural produce and other articles of commerce;

(g) **Warehouse Receipt.**—"Warehouse receipt":—

(i.) Means any receipt given by any person for any goods, wares or merchandise in his actual, visible and continued possession, as bailee thereof, in good faith, and not as of his own property, and

(ii.) Includes receipts given by any person who is the owner or keeper of a harbor, cove, pond, wharf, yard, warehouse, shed, storehouse or other place for the storage of goods, wares or merchandise, for goods, wares and merchandise delivered to him as bailee and actually in the place, or in one or more of the places owned or kept by him, whether such person is engaged in other business or not; and

(iii.) Includes also receipts given by any person in charge of logs or timber in transit from timber limits or other lands, to the place of destination of such logs or timber;

(h) **Bill of Lading.**—"Bill of lading" includes all receipts for goods, wares or merchandise, accompanied by an undertaking to transport the same from the place where they were received to some other place, by any mode of carriage whatever, whether by land or water, or partly by land and partly by water;

(i) **Manufacturer.**—"Manufacturer" includes manufacturers of logs, timber or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise;

(j) **President.**—"President" does not include an honorary president;

2. Public Notice, How Given.—Where by this Act any public notice is required to be given, the notice shall, unless otherwise specified, be given by advertisement,—

(a.) In one or more newspapers published at the place where the read office of the bank is situate; and

(b.) In the "Canada Gazette," 53 Vict., chap. 31, ss. 2, 54 and 102; 63-64 Vict., chap. 26, ss. 3 and 24. 4-5 E. VII., chap. 4, s. 4.

(a) **Bank.**—The banks to which this act applies are specified in secs. 3, 4, 5 and 6. By sec. 156, every person assuming or using the title "bank," "banking company," etc., without being authorized so to do by this Act, or by some other act in force in that behalf, is guilty of an offence against this act.

As to what is a bank in regard to its business and powers, see notes to sec. 76.

A bank for the purpose of the Bills of Exchange Act means an incorporated bank or savings bank carrying on business in Canada (see sec. 2 (c) of that act, *infra*).

(b) **"Minister."**—The Minister of Finance and Receiver-General is frequently referred to in the act. He is also chairman of the Treasury Board, which exercises important functions under the act. See secs. 15 to 17, 33, 35, 67, 68 and 137. By the act respecting the Department of Finance and the Treasury Board. The Board consists of the Minister of Finance and Receiver-General, and any five of the Ministers belonging to the King's Privy Council for Canada, to be nominated from time to time by the Governor-in-Council; the Board acts as a committee of the Privy Council on all matters relating to finance, revenue and expenditure, or public accounts, which are referred to it by the Council, or to which the Board thinks it necessary to call the attention of the Council, and has power to require from any public department, board or officer, or other person or party bound by law to furnish the same to the government, any account, return, statement, document or information which the Board deems requisite for the due performance of its duties.

(d) **"Curator."**—See sec. 117.

(e) **"Circulation Fund."**—See sec. 64, *infra*.

(f) **"Goods, Wares and Merchandise."** See notes to sec. 76. This expression is used also in secs. 86 to 91.

(g) **"Warehouse Receipt."**—

(h) **"Bill of Lading."**—A warehouse receipt is in some respects like a bill of lading. Each is a receipt or acknowledgment that the goods of one person have been received by another, but the legal effects of these documents at common law were very different. A bill of lading, being an acknowledgment by a carrier that goods had been received for carriage, was an instrument well known to commerce, and by the custom of merchants peculiar incidents were attached to it, the most important of which was that upon its transfer the property in the goods mentioned in it passed to the transferee. A warehouse receipt on the contrary has not by custom any peculiar incidents attached to it, and its mere transfer did not pass to the transferee the property in the goods (*Bank of British North America v. Clarkson*, 1869, 19 C. P. at p. 163).

Bills of Lading Act and Factors' Acts.—In England the Bills of Lading Act and the Factors Acts have largely extended the effect of bills of lading, and the rights of the holders of them. The former act confers upon the consignee of goods named in a bill of lading, and an endorsee of a bill of lading, to whom the property

in the goods pass upon, or by reason of such consignment or endorsement the same rights of suit, and subjects him to the same liability as if the contract contained in the bill of lading had been made with himself. The latter acts are intended to afford security to persons dealing with factors or agents entrusted with the possession of goods, or of the documents of title to goods. These or similar acts are in force in various parts of Canada. Cf., R. S. C., c. 118.

Collateral Security.—The Bank Act does, however, deal with the subject of warehouse receipts and bills of lading (as defined in this section) to the extent of giving the banker special privileges in regard to taking such documents as collateral security. See secs. 86 *et seq.*

Bill of Lading not a Negotiable Instrument.—A bill of lading is not negotiable in the special sense that a bill of exchange may be negotiable. The mere honest possession of a bill of lading endorsed in blank, or upon which the goods are made deliverable to bearer, is not such a title to the goods as the like possession of a bill of exchange would be to the money promised to be paid by the acceptor. *The endorsement of a bill of lading gives no better right to the goods than the endorser himself had* (except in cases where an agent entrusted with it may transfer it to a *bona fide* holder under the Factors' Acts), so that if the owner should lose or have stolen from him a bill of lading endorsed in blank, the finder or the thief could confer no title upon an innocent third person. But the title of *bona fide* third persons will prevail against the seller who has actually transferred the bill of lading to the buyer, although he may have been induced by the buyer's fraud to do so, because a transfer obtained by fraud is only voidable, not void. Benjamin on Sales, 5th ed. 1906, p. 919. Pollard v. Vinton, 1881, 105 U. S. at p. 8.

APPLICATION.

GENERAL.

3. To what Banks this Act applies.—The provisions of this Act apply to the several banks enumerated in Schedule A to this Act, and to every bank incorporated after the first day of January one thousand nine hundred and five, whether this Act is specially mentioned in its Act of incorporation or not, but not to any other bank, except as hereinafter specially provided. 53 V., c. 31, s. 3.

4. Bank charters continued to July 1, 1911, as to some particulars.—The charters or Acts of incorporation and any Acts in amendment thereof, of the several banks enumerated in schedule A to this Act, are continued in force until the first day of July, one thousand nine hundred and eleven, so far as regards, as to each of such banks:—

- (a.) The incorporation and corporate name;
- (b.) The amount of the authorized capital stock;
- (c.) The amount of each share of said stock; and,
- (d.) The chief place of business;

subject to the right of each of such banks to increase or reduce its authorized capital stock in the manner hereinafter provided

2. As to Other Particulars.—As to all other particulars, the Act shall form and be the charter of each of the said banks until the first day of July, one thousand nine hundred and eleven.

3. **Forfeited or Void Charters not Continued.**—Nothing in this section shall be deemed to continue in force any charter or Act of incorporation, if, or in so far as it is, under the terms thereof, or under the terms of this Act or of any other Act passed or to be passed, forfeited or rendered void by reason of the non-performance of the conditions of such charter or Act of incorporation, or by reason of insolvency, or for any other reason. 63-64 V., c. 26, s. 6.

SCHEDULE A.

1. The Bank of Montreal.
 2. The Bank of New Brunswick.
 3. The Quebec Bank.
 4. The Bank of Nova Scotia.
 5. The St. Stephen's Bank.
 6. The Bank of Toronto.
 7. The Molsons' Bank.
 8. The Eastern Townships' Bank.
 9. The Union Bank of Halifax.
 10. The Ontario Bank.
 11. La Banque Nationale.
 12. The Merchants' Bank of Canada.
 13. La Banque Provinciale du Canada.
 14. The People's Bank of New Brunswick.
 15. The Union Bank of Canada.
 16. The Canadian Bank of Commerce.
 17. The Royal Bank of Canada.
 18. The Dominion Bank.
 19. The Bank of Hamilton.
 20. The Standard Bank of Canada.
 21. La Banque de St. Jean.
 22. La Banque d'Hochelaga.
 23. La Banque de St. Hyacinthe.
 24. The Bank of Ottawa.
 25. The Imperial Bank of Canada.
 26. The Western Bank of Canada.
 27. The Traders' Bank of Canada.
 28. The Sovereign Bank of Canada.
 29. The Metropolitan Bank.
 30. The Crown Bank of Canada.
 31. The Home Bank of Canada.
 32. The Northern Bank.
 33. The Sterling Bank of Canada.
 34. The United Empire Bank of Canada.
- 63-64 V., c. 26, s. 4, and Sch. A.

The first 27 banks named in Schedule A, to the present Act were included in Schedule A. to the Bank Act, 1890, and obtained the usual ten years' extension of their charters under the Act of 1900. The last seven banks named in Schedule A. have commenced business since 1900.

La Banque Provinciale du Canada was formerly named La Banque Jacques Cartier (63-64 Vict., c. 102), and the Royal Bank of Canada was formerly named the Merchants Bank of Halifax (63-64 Vict., c. 103.)

The Bank of British North America is specially provided for by sec. 6.

The following banks mentioned in Schedule A. have suspended payment, or have amalgamated with or been absorbed by other banks:

1. The Ontario Bank is being wound up, most of its assets having been taken over by the Bank of Montreal in October, 1906.

2. In January, 1907, the shareholders of the People's Bank of New Brunswick approved of the sale of the bank's assets to the Bank of Montreal.

3. The Crown Bank and the Northern Bank have amalgamated under the name of the Northern Crown Bank, the agreement being ratified by their respective shareholders in February, 1908. See Dominion Act of 1908.

4. The Sovereign Bank in January, 1908, conveyed its assets to trustees for the purpose of liquidating the liabilities of the bank.

5. La Banque de St. Jean went into liquidation in April, 1908.

6. La Banque de St. Hyacinthe suspended payment 24th June, 1908.

7. The Western Bank of Canada has been absorbed by the Standard Bank of Canada, the agreement being ratified in January, 1909.

Since the 1st of January, 1905 (the date referred to in sec. 3.) the following banks not mentioned in Schedule A have commenced business or have been incorporated or have obtained extensions of time for obtaining the certificate required by secs. 14 and 16:—

1. Farmers Bank of Canada, incorporated by 4 Edw. VII., c. 77, time extended by 5 Edw. VII., c. 92 and by 6 Edw. VII., c. 94.

2. Anglo-Canadian and Continental Bank, incorporated 1908.

BANKS IN COURSE OF WINDING UP.

5. Act Continues to Apply for Purposes of Winding up.—

The provisions of this Act shall continue to apply to the banks named in schedule A to the Bank Act, passed in the fifty-third year of Her late Majesty's reign, chapter thirty-one, and not named in schedule A to this Act, but only in so far as may be necessary to wind up the business of the said banks respectively; and the charters or Acts of incorporation of the said banks, and any Acts in amendment thereof, or any Acts in relation to the said banks now in force, shall respectively continue in force for the purposes of winding-up, and for such purposes only.

2. **Bank of British Columbia.**—The sections of this Act enumerated in the next following section shall continue to apply to the Bank of British Columbia, but only in so far as may be necessary to wind up the business of the bank. 63-64 V., c. 26, s. 5.

THE BANK OF BRITISH NORTH AMERICA.

6. What Provisions Applicable.—The sections of this Act which apply to the Bank of British North America are sections,—

one;

two;

six;

seven;

thirty-nine;

forty-five;

fifty-seven to sixty-one, both inclusive;

sixty-three to one hundred any twenty-four, both inclusive;

one hundred and thirty;

one hundred and thirty-two to one hundred and fifty-two, both inclusive; and,

one hundred and fifty-four to one hundred and fifty-seven, both inclusive.

2. The other sections of this Act do not apply to the Bank of British North America. 53 V., c. 31, s. 6; 63-64 V., c. 26, s. 7.

7. Chief Office at Montreal.—For the purposes of the several sections of this Act made applicable to the Bank of British North America, the chief office of the Bank of British North America shall be the office of the bank at Montreal in the province of Quebec. 53 V., c. 31, s. 7.

The Bank of British North America was incorporated by royal charter, and has a corporate existence independently of the act. Its head office is situated in London, Eng. The bank is subject to the Bank Act to the extent specified in sec. 6.

INCORPORATION AND ORGANIZATION OF BANKS.

8. Particulars of Act of Incorporation.—The capital stock of every bank hereafter incorporated, the name of the bank, the place where its chief office is to be situated, and the name of the provisional directors, shall be declared in the Act of incorporation of such every bank respectively. 53 V., c. 31, s. 9.

9. Form thereof.—An Act of incorporation of a bank in the form set forth in schedule B to this Act shall be construed to confer upon the bank thereby incorporated all the powers, privileges and immunities, and to subject it to all the liabilities and provisions set forth in this Act. 53 V., c. 31, s. 9.

SCHEDULE B.

An Act to incorporate the Bank.

Whereas the persons hereinafter named have, by their petition, prayed that an Act be passed for the purpose of establishing a bank in , and it is expedient to grant the prayer of the said petition:

Therefore His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

1. The persons hereinafter named, together with such others as become shareholders in the corporation by this Act created, are hereby constituted a corporation by the name of hereinafter called the Bank.

2. The capital stock of the bank shall be dollars.

3. The chief office of the bank shall be at

4.

shall be the provisional

directors of the Bank.

5. This Act shall, subject to the provisions of section sixteen of The Bank Act, remain in force until the first day of July, in the year one thousand nine hundred and eleven.

53 V., c. 31, sch. B.; 63-64 V., c. 26, s. 45.

10. Capital Stock and Shares.—The capital stock of any bank hereafter incorporated shall be not less than five hundred thousand dollars, and shall be divided into shares of one hundred dollars each. 53 V., c. 31, s. 10.

11. Provisional Directors.—The number of provisional directors shall be not less than five;

2. **Tenure.**—The provisional directors shall hold office until directors are elected by the subscribers to the stock, as hereinafter provided. 53 V., c. 31, s. 11; 4-5 E. VII., c. 4, s. 1.

As hereinafter provided, see sec. 13.

12. **Opening of Stock Books.**—For the purpose of organizing the bank, the provisional directors may, after giving public notice thereof, cause stock books to be opened, in which shall be recorded the subscriptions of such persons as desire to become shareholders in the bank.

2. **Where.**—Such books shall be opened at the place where the chief office of the bank is to be situate, and elsewhere, in the discretion of the provisional directors.

3. **How Long.**—Such stock may be kept open for such time as the provisional directors deem necessary. 53 V., c. 31, s. 12.

Powers of Provisional Directors.—The powers of the provisional directors seem to be limited to the organization of the bank, and, for that purpose, to the opening of stock books and the obtaining of subscriptions and payments thereon sufficient to comply with sec. 13, and then under the last mentioned section the calling of a meeting of subscribers to supplant them by the election of directors from among the subscribers, which the provisional directors themselves may never be. (*In re North Simcoe Railway Co. v. Toronto*, 1874, 36 U. C. R. at p. 119.) They are merely trustees to start, as it were, the ordinary legal machinery into motion. Upon the meeting of the subscribers and the election of directors, the whole object of the appointment of provisional directors is satisfied, and their authority ceases. (*Michie v. Erie & Huron*, 1876, 26 C. P. at p. 574, *Cf. Monarch Life v. Brophy*, 1907, 14 O. L. R. 1, 12).

The prohibition of section 14 against the bank's commencing the business of banking is not intended to prevent calls being made on stock subscribed for, or to prevent the board of provisional directors from doing any acts for and in the name of the bank within the power of directors, so long as such acts fall short of what might properly be termed "commencing operations." (*North Sydney v. Greener*, 1898, 31 N. S. R. 41).

13. **First Meeting of Subscribers.**—So soon as a sum not less than five hundred thousand dollars of the capital stock of the bank has been *bona fide* subscribed, and a sum not less than two hundred and fifty thousand dollars thereof has been paid to the Minister, the provisional directors may, by public notice, published for at least four weeks, call a meeting of the subscribers to the said stock, to be held in the place named in the Act of incorporation as the chief place of business of the bank, at such time and at such place therein as set forth in the said notice.

2. **Business Thereat.**—The subscribers shall at such meeting,—
(a) determine the day upon which the annual general meeting of the bank is to be held; and,

(b) Elect such number of directors, duly qualified under this Act, not less than five, as they think necessary;

3. **Tenure of Directors.**—Such directors shall hold office until the annual general meeting in the year next succeeding their election.

4. **Provisional Directors Cease.**—Upon the election of directors as aforesaid, the functions of the provisional directors shall cease. 53 V., c. 31, s. 13; 4-5 E. VII., c. 4., s. 2.

Prerequisites to Commencement of Business.—The requirements to be satisfied before a new bank commences business as

provided by this and the next following three sections are, briefly, the following:

1. *Bona fide* subscriptions of \$500,000 and payment on account thereof to the Minister of Finance of £250,000 (Sec. 13).

2. Calling of meeting of subscribers by the provisional directors, and election of directors (Sec. 13).

3. Obtaining of certificate from the Treasury Board within one year from the passing of the Act of incorporation (Secs. 14 and 16.)

Upon the issue of the Treasury Board's certificate, the Minister of Finance is required to pay to the bank without interest the amount deposited with him, after deducting therefrom \$5,000 for the purposes of the Bank Circulation Redemption Fund under section 64. In the event of no certificate being issued within the year, the Minister is required to repay the amount deposited to the person depositing the same, and the charter of the bank lapses.

The "public notice" required is prescribed by sec. 2, sub-sec. 2.

14. Permission of Treasury Board to Commence Business.

—The bank shall not issue notes or commence the business of banking until it has obtained from the Treasury Board a certificate permitting it to do so.

2. **No certificate until Directors Elected.**—No application for such certificate shall be made until directors have been elected by the subscribers to the stock in the manner hereinbefore provided. 53 V., c. 31, s. 14.

See notes to section 13.

Sec. 132 makes it an offence against this Act to issue notes or commence business before the obtaining of the certificate.

Sec. 15 prescribes the conditions to be performed before the certificate of the Treasury Board may be given.

"Commence the business of banking," refers to the transaction of business with the public as distinguished from dealings connected with subscriptions for stock. Cf. *North Sydney v. Greener*, referred to in the notes to sec. 12.)

15. When Certificate may be granted.—No certificate shall be given by the Treasury Board until it has been shown to the satisfaction of the Board, by affidavit or otherwise, that all the requirements of this Act and of the special Act of incorporation of the bank, as to the payment required to be made to the Minister, the election of directors, deposit for security for note issue, of other preliminaries have been complied with, and that the sum so paid is then held by the Minister;

2. **Within one Year.**—No such certificate shall be given except within one year from the passing of the Act of incorporation of the bank applying for the said certificate. 53 V., c. 31, s. 15.

16. If certificate not Granted—Powers to Cease.—If the bank does not obtain a certificate from the Treasury Board within one year from the time of the passing of its Act of incorporation, all the rights, powers and privileges conferred on the bank by its Act of incorporation shall thereupon cease and determine, and be of no force or effect whatever. 53 V., c. 31, s. 16.

See notes to sec. 13.

17. Deposit, how disposed of if certificate granted.—Upon the issue of the certificate in manner hereinbefore provided, the Minister shall forthwith pay to the bank the amount of money so deposited with him as aforesaid, without interest, after deducting therefrom the sum of five thousand dollars required to be deposited

under the provisions of this Act for the securing of the notes issued by the bank.

2. If Certificate not Granted.—In case no certificate is issued by the Treasury Board within the time limited for the issue thereof, the amount so deposited shall be returned to the person depositing the same.

3. Minister not Bound.—In no case shall the Minister be under any obligation to see to the proper application in any way of the amount so returned. 53 V., c. 31, s. 17.

See notes to sec. 13.

Sec. 64 requires the Minister of Finance to retain the sum of \$5,000 for the purposes of the Bank Circulation Redemption Fund.

INTERNAL REGULATIONS.

18. By-laws.—The shareholders of the bank may regulate, by by-law, the following matters incident to the management and administration of the affairs of the bank, that is to say:—

(a) The day upon which the annual general meeting of the shareholders for the election of directors shall be held;

(b) The record to be kept of proxies, and the time, not exceeding thirty days, within which proxies must be produced and recorded prior to a meeting in order to entitle the holder to vote thereon;

(c) The number of the directors, which shall be not less than five, and the quorum thereof, which shall be not less than three;

(d.) Subject to the provisions hereinafter contained, the qualifications of directors;

(e.) The method of filling vacancies in the board of directors, whenever the same occur during each year;

(f.) The time and proceedings for the election of directors, in case of a failure of any election on the day appointed for it;

(g.) The remuneration of the president, vice-president and other directors; and

(h.) The amount of discounts or loans which may be made to directors, either jointly or severally, or to any one firm or person, or to any shareholder, or to corporations.

2. Guarantee and Pension Funds.—The shareholders may authorize the directors to establish guarantee and pension funds for the officers and employees of the bank and their families, and to contribute thereto out of the funds of the bank.

3. Existing By-laws continued.—Until it is otherwise prescribed by by-law under this section, the by-laws of the bank on any matter which may be regulated by by-law under this section shall remain in force, except as to any provision fixing the qualification

As to qualification of directors, the section is subject to sec. 20. V., c. 31, s. 18; 4-5 E. VII., c. 4, s. 3.

The shareholders meet and vote at the annual general meetings of the bank (the first of such meetings being held at a time appointed under sec. 13 and subsequent ones being regulated by by-law under sec. 18), and at special general meetings called by virtue of sec. 31. Sec. 32 regulates the voting at any shareholders' meetings. Although the shareholders may name the *day* of the annual meeting, the *hour* of the day is appointed by the directors, the place of meeting must be the head office of the bank and public notice must be given (sec. 21). It is advisable that the by-law appointing a day for the election of directors (sec. 18) should also

provide for the possible failure of the election on that day, as by sec. 27 the election may take place on any other day appointed by by-law of the shareholders. A meeting held on the day first appointed could no doubt be legally adjourned to another named day, so as to allow of the election of directors. (*Reg. v. Wimbledon*, 1882, 8 Q. B. D. at p. 463). Failing an adjournment, a special general meeting of the shareholders would have to be called.

As to the general meetings of the shareholders, cf. secs. 21, 22 23 and 31.

As to proxies, cf. sec. 32

As to qualification of directors, the section is subject to sec. 20.

As to filling of vacancies during the year, cf. sec. 25.

In case of failure to elect directors, the old directors continue in office until a new election is made: see sec. 27.

The aggregate amount of loans to directors and firms of which they are partners must be shown in the monthly return, schedule D. See sec. 112.

For other powers expressly conferred upon the shareholders by the Act, see secs. 31 (4), 33, 35, 55, 101 and 103.

19. Board of Directors.—The stock, property, affairs and concerns of the bank shall be managed by a board of directors, who shall be elected annually in manner hereinafter provided, and shall be eligible for re-election. 53 V., c. 31, s. 19.

The number of directors is to be not less than five and their quorum not less than three, but otherwise their number and quorum are subject to regulation by the shareholders. (Sec. 18.) Cf. notes to sec. 12.

See also the following sections relating to directors.

20. Qualification.

21-27. Election.

28. Meetings.

29-30. General Powers.

Duties and Liabilities of Directors.—At every annual meeting of the shareholders it is the duty of the outgoing directors to submit a clear and full statement of the affairs of the bank, containing the particulars required by sec. 54 and any additional statements which may be lawfully required by the shareholders under sec. 55.

The directors are responsible for knowingly and wilfully concurring in declaring any dividend or bonus so as to impair the paid-up capital. (Sec. 58.)

A director is liable criminally if he pledges, assigns or hypothecates notes of the bank (sec. 139), if he refuses to make calls on the double liability of the shareholders after the expiration of three months from the insolvency of the bank (sec. 154), if he wilfully gives or concurs in giving any creditor of the bank any fraudulent, undue or unfair preference over other creditors (sec. 155), or if he makes any wilfully false or deceptive statement in any account, statement, return report or other document respecting the affairs of the bank (sec. 153.) In the last case he is also responsible for all damages sustained by any person in consequence of such statement.

20. Qualifications.—Each director shall,—

(a.) When the paid-up capital stock of the bank is one million dollars or less, hold stock of the bank on which not less than three thousand dollars have been paid up;

(b.) When the paid-up capital stock of the bank is over one million dollars and does not exceed three million dollars, hold

stock of the bank on which not less than four thousand dollars have been paid up; and

(c.) When the paid-up capital stock of the bank exceeds three million dollars, hold stock of the bank on which not less than five thousand dollars have been paid up;

2. **Idem.**—No person shall be elected or continue to be a director unless he holds stock paid up to the amount required by this Act, or such greater amount as is required by any by-law in that behalf.

3. **Majority to be British subjects.**—A majority of the directors shall be natural born or naturalized subjects of His Majesty. 53 V., c. 31, ss. 18 and 19.

Qualification of Directors.—The shareholders may under sec. 18 make by-laws requiring additional qualifications for a director.

21. **Election of Directors.**—The directors shall be elected by the shareholders on such day in each year as is appointed by the charter or by any by-law of the bank, and at such time of the day as the directors appoint.

2. **At Head Office.**—The election shall take place at the head office of the bank.

3. **Notice.**—Public notice of the election shall be given by the directors by publishing such notice, for at least four weeks previously to the time of holding the election, in a newspaper published at the place where the head office of the bank is situate. 53 V., c. 31, s. 19.

Public Notice.—The public notice required is defined by the section, whereas in other sections (*e. g.*, secs. 13 and 31), the words "public notice" are used without any limitation and therefore mean public notice as defined by sec. 2, sub-sec. 2.

The first directors are elected at the meeting of subscribers called by the provisional directors under sec. 13. Thereafter the directors are elected at the annual general meeting held each year on the day appointed by the charter or by by-law of the shareholders (secs. 18 and 21), or, if the election does not take place on such day, then on any other day according to the by-laws made by the shareholders in that behalf (secs. 18 and 27). The directors, as soon as may be after their own election, elect two of their number to be president and vice-president respectively, and they may also elect one of their number to be honorary president (sec. 24). A vacancy which occurs in the board is filled in the manner provided by the by-laws (secs. 18 and 25), and if such vacancy is in the office of president or vice-president, the directors elect such officer from among themselves (sec. 26). The president, the vice-president or any director may be removed by the shareholders at a special general meeting called for the purpose (sec. 31).

22. **Who shall be Directors.**—The persons, to the number authorized to be elected, who have the greatest number of votes at any election, shall be directors. 53 V., c. 31, s. 19.

23. **Provision in case of Equality of Votes.**—If it happens at any election that two or more persons have an equal number of votes, and the election or non-election of one or more of such persons as a director or directors depends on such equality, then the directors who have a greater number of votes, or the majority of them, shall, in order to complete the full number of directors, determine which of the said persons so having an equal number of votes shall be a director or directors. 53 V., c. 31, s. 19.

24. **Election of President and Vice-President—Honorary President.**—The directors, as soon as may be after their election,

shall proceed to elect, by ballot, two of their number to be president and vice-president respectively.

2. The directors may also elect by ballot one of their number to be honorary president. 53 V., c. 31, s. 19; 4-5 E. VII., c. 4, s. 4.

As to the duties of president and vice-president, see sec. 28.

25. Vacancies, how filled.—If a vacancy occurs in the board of directors, the vacancy shall be filled in the manner provided by the by-laws: Provided that, if the vacancy is not filled, the acts of a quorum of the remaining directors shall not be thereby invalidated. 53 V., c. 31, s. 19.

Sec. 18, sub-sec. 1, clause (e), confers upon the shareholders power to regulate by by-law the method of filling vacancies in the board.

26. Vacancy of President or Vice-President.—If a vacancy occurs in the office of the president or vice-president, the directors shall, from among themselves, elect a president or vice-president, who shall continue in office for the remainder of the year. 53 V., c. 31, s. 19.

27. Failure of Election.—If an election of directors is not made on the day appointed for that purpose, such election may take place on any other day, according to the by-laws made by the shareholders in that behalf.

2. The directors in office on the day appointed for the election of directors shall remain in office until a new election is made. 53 V., c. 31, s. 20.

Cf. sec. 18, sub-sec. 1 (e).

28. Meetings of Directors.—The president, or in his absence the vice-president, shall preside at all meetings of the directors.

2. **Idem.**—If at any meeting of the directors, both president and vice-president are absent, one of the directors present, chosen to act *pro tempore*, shall preside,

3. **Voting.**—The president, vice-president or president *pro tempore*, so presiding, shall vote as a director, and shall, if there is an equal division on any question, also have a casting vote. 53 V., c. 31, s. 21.

This section contains the only provisions of the Act relating to directors' meetings, except the provisions of section 18, giving power to the shareholders to regulate the quorum. Cf., sec. 12.

Duties of President and Vice-President.—Cf., sec. 24.

The only duties imposed specially upon the president (or in his absence the vice-president), by the Act are to preside at meetings of directors (sec. 28), to sign the bonds and other obligations of the bank (sec. 73), and to sign the monthly and other returns to the government (secs. 112, 113 and 114).

29. General Powers of Directors.—The directors may make by-laws and regulations, not repugnant to the provisions of this Act or to the laws of Canada, with respect to,—

(a) The management and disposition of the stock, property, affairs and concerns of the bank;

(b) The duties and conduct of the officers, clerks and servants employed therein; and,

(c) All such other matters as appertain to the business of a bank.

2. **Existing By-laws, continued.**—All by-laws of the bank heretofore lawfully made and now in force with regard to any matter respecting which the directors may make by-laws under this section, including any by-laws for the establishing of guarantee and pension

funds for the employees of the bank, shall remain in force until they are repealed or altered by other by-laws made under this Act. 53 V., c. 31, s. 22.

The exercise by the directors of the powers given by this section is subject to any by-laws made by the shareholders under sec. 18.

Powers in regard to various matters are conferred upon the directors by secs. 30, 31, 34, 36 to 38, 40 to 42, 56, 57 and 73.

(1) *Busby vs. Bank of Montreal*, N. B. Equity cases, 62 (1880).

Held, that no power was vested in the directors of a bank to pass a by-law fixing the date of the annual meeting of the shareholders for the election of directors, and that it was therefore *ultra vires*; and that one shareholder could not maintain a bill in his own name alone respecting an injury common to all the shareholders.

30. Appointment of Officers.—The directors may appoint as many officer, clerks and servants as they consider necessary for the carrying on of the business of the bank.

2. Branches.—The directors may also appoint a director or directors for any branch of the bank.

3. Salaries.—Such officers, clerks and servants may be paid such salaries and allowances as the directors consider necessary.

4. Security. The directors shall, before permitting any cashier, officer, clerk or servant of the bank to enter upon the duties of his office, require him to give a bond, guarantee or other security to the satisfaction of the directors, for the due and faithful performance of his duties. 53 V., c. 31, s. 23.

Under this section the directors may appoint a general manager, and branch managers, and also subordinate officers and clerks. They may also assign to one or more members of the board of directors the special supervision of particular branches.

(1) *Banque Nationale vs. City Bank*, 17 L. C. J. 197 (1873).

Cheques fraudulently initialled as accepted by the manager of a bank, and for which the drawer has given in exchange to the manager certain securities which the bank retains, cannot be repudiated by the bank, when the cheques are held by a *bona fide* holder for value.

(2) *Grieve vs. Molsons' Bank*, 8 O. R. 162 (1885).

A bank manager is not acting without the scope of his authority in accepting the cheque of a customer to deliver to another customer on a particular day, or on the happening of a special event.

(3) *Exchange Bank vs. La Banque du Peuple*, M. L. R. 3 Q. B. 232 (1886).

A bank is liable for the acceptance by its president and cashier of cheques marked good on future dates specified, which were afterwards discounted by the plaintiff in good faith and in the ordinary course of business. (Affirmed by Supreme Court 10 L. N. 362.)

(4) *Exchange Bank vs. La Banque du Peuple*, 10 L. N. 362 (1887).

In 1881, G., having business transactions with the Exchange Bank, agreed with C., president and manager of the bank, that in lieu of further advances the bank would accept his cheque, but made payable at a future date. On the 19th October, 1881, G. drew a cheque on the Exchange Bank, and after having it accepted as follows: "Good on February 19th, 1882. T. Craig, President." got the cheque discounted by the People's Bank and deposited the proceeds to his credit in the Exchange Bank. This cheque was renewed on the 23rd of May, and it was presented at the Exchange Bank and paid. Thereupon another cheque for the same

amount was accepted in the same way and discounted by the People's Bank on the 7th September, 1883. At the time of the suspension of payment by the Exchange Bank, the People's Bank had in its possession four cheques signed by G., and accepted by T. Craig, president of the Exchange Bank, which were subsequently presented for payment on the dates when they were payable, and duly protested, and also after the three days of grace.

The total amount of these cheques was \$66,020.64, and one of them, viz., the one dated 7th September, 1883, for \$31,000, was a renewal of the cheque, the proceeds of which had been paid to the credit of G. in the Exchange Bank.

On an action by the People's Bank against the Exchange Bank, for the recovery of the sum of \$66,020.74, based on the four cheques in question, the Exchange Bank pleaded *inter alia* that C. had not acted within the scope of his duties and within the limits of his powers, and that the bank had never authorized or ratified his acceptance of G.'s cheques.

Held, affirming the judgment of the Court of Queen's Bench, that under the circumstances the Exchange Bank was liable for the acceptance by their president and manager of G.'s cheques discounted by the People's Bank in good faith and in due course of business.

(5) *La Banque Jacques Cartier vs. Montreal City and District Savings Bank*, 13 App. Cas. 111 (1887).

Where the accounts of a bank in liquidation had been changed so as to represent the bank as a debtor in respect of a sum which had been borrowed by its manager for his own purposes:—

Held, that the doctrine of acquiescence and ratification by the liquidating authorities would not avail to render the bank liable to pay a debt which it never owed.

(6) *Bank of Commerce vs. Jenkins*, 16 O. R. 215 (1888).

A deed executed by the manager of a bank, not being under the corporation seal, nor under a signature or sign manual, where it executed documents, was not binding on the bank.

(7) *Merchants' Bank vs. Whidden*, 19 S. C. R. 53 (1891).

K., agent of a bank and also a member of a business firm, procured accommodation drafts from a customer of the bank, which he discounted as such agent, and, without endorsing the drafts, used the proceeds, in violation of his instructions from the head office, in the business of his firm. The firm, having become insolvent, executed an assignment in trust of all their property by which the trustee was to pay "all debts by the assignors or either of them due and owing or accruing or becoming due and owing" to the said bank as first preferred creditor, and to the makers of the accommodation paper, among others, as second preferred creditors. The estate not proving sufficient to pay the bank in full, a dispute arose as to the accommodation drafts, the bank claiming the right to disavow the action of the agent in discounting them and appropriating the proceeds in breach of his duty as creating a debt due to it from his firm, the makers claiming that they were really debts due to the bank from the insolvents. In a suit to enforce the carrying out of the trusts created by the assignment—

Held, That the drafts were "debts due and owing" from the insolvents to the bank and within the first preference created by the deed.

K. procured the accommodation paper for the sole purpose of borrowing the money of the bank for his firm, and when the firm

received that money they became debtors to the bank for the amount.

That the agent being bound to account to the bank for the funds placed at his disposal, he became a debtor to the bank, on his authority being revoked, for the amount of these drafts as money for which he had failed to account. Whether or not the bank had a right to elect to treat the act of the agent as a tort was not important, as in any case there was a debt due.

(8) *Exchange Bank vs. Fletcher*, 19 S. C. R. 278 (1891).

The Exchange Bank, in advancing money to F. on the security of Merchants' Bank shares, caused the shares to be assigned to their managing director, and an entry to be made in their books that the managing director held the shares in question on behalf of the bank as security for the loan. The bank subsequently credited F. with the dividends accruing thereon. Later on, the managing director pledged these shares to another bank for his own personal debt, and absconded.

Held, that upon re-payment by F. of the loan made to him, the Exchange Bank was bound to return the shares or pay their value. The prohibition to advance upon security of shares of another bank contained in the amendment to the general banking act applies to the bank and not to the borrower.

Assuming that the subsequent amendment of the general banking act forbade the taking of such security by any bank, the amendment did not alter the charter of the Exchange Bank, 35 Vic. ch. 51 (D), under which the Exchange Bank had power to take the shares in question in its corporate name as collateral security. To take such security may have become an offence against the banking law, punishable from the beginning as a misdemeanor and subject to a pecuniary penalty, but it was not *ultra vires*. Art. 14 C. C., which declares that prohibitive laws import nullity, has no application to such a case.

(9) *Thompson vs. Bank of Nova Scotia*, 13 C. L. Times 311 (1893).

It is no part of the business of a bank agent to institute criminal proceedings against a debtor of the bank, and his doing so is in excess of authority.

(10) *Richards vs. Bank of Nova Scotia*, 26 S. C. R. 381 (1896).

Where an agent does an act outside of the apparent scope of his authority, and makes a representation to the person with whom he acts to advance the private ends of himself or someone else other than his principal, such representation cannot be called that of the principal. In such a case it is immaterial whether or not the person to whom the representation was made believed the agent had authority to make it.

The local manager of a bank having received a draft to be accepted induced the drawer to accept by representing that certain goods of his own were held by the bank as security for the drafts. In an action on the draft against the acceptor—

Held, that the bank was not bound by such representation; that by taking the benefit of the acceptance it could not be said to adopt what the manager said in procuring it, which would burden it with responsibility instead of conferring a benefit; and that the knowledge of the manager with which the bank would be affected should be confined to knowledge of what was material to the transaction and the duty of the manager to make known to the bank.

SECURITY TO BE GIVEN.

- (1) *City Bank vs. Brown*, 2 L. C. R. 246 (1852).

A bond conditional upon the due fulfilment of the duties of an officer in a bank is made void by the reduction of the salary stipulated, in favor of such officer, in and by the deed containing such bond, and that such reduction, without the consent of the sureties, has the effect of a novation.

- (2) *Bank of Upper Canada vs. Bradshaw*, L. R., 1 P. C. 479 (1867).

In an action brought by a banking company against their late manager and cashier, to recover moneys belonging to the bank, alleged to have been improperly applied in discounting bills, etc., for his own advantage, for the benefit of parties and companies with whom he was connected, and in which he was interested, it appeared that such transactions were all in the ordinary course of the business of the bank; that he had not exceeded the power and authority with which he was entrusted; and that no case of bad faith could be proved against him. Under such circumstances, the action of the bank was dismissed.

- (3) *Bank of Toronto vs. European Assurance Society*, 14 L. C. J. 186 (1870).

Held, that the allowing, by a bank manager, of overdrafts, without security, is an irregularity within the meaning of a policy guaranteeing the bank against such loss as might be occasioned to the bank by the want of integrity, honesty and fidelity, or by the negligence, defaults or irregularities of the manager, where, in the opinion of the court, the evidence established that the manager concealed the fact of the overdrafts from the head office by fictitious returns, and acted in improper concert with the parties whom he allowed to overdraw.

- (4) *Banque Nationale vs. Lesperance*, 4 L. N. 147 (1881).

The teller of a bank endorsed on a parcel of bank notes the amount which it was supposed to contain. It was subsequently discovered that the parcel was \$6,300 short, and it was ascertained that a deficiency of the same amount existed in the teller's accounts, and had been during several years skilfully covered up and concealed from the knowledge of the authorities of the bank, who had made the usual inspections.

Held, that a guarantee insurance company which had guaranteed the fidelity of the teller was liable for the deficiency, but only to the extent which occurred after the contract was made.

- (5) *Exchange Bank vs. Gault*, 30 L. C. J. 259 (1886).

A. gave a bond that C., who was cashier of a bank, would faithfully perform his duties. C. was afterwards made president of the bank, and when in such a position committed a defalcation.

Held, that the bond was void.

- (6) *Springer vs. Exchange Bank; Barnes vs. Exchange Bank*, 14 S. C. R. 716 (1887).

The sureties of an absconding bank cashier are not relieved from liability by showing that the bank employed their principal in transacting what was not properly banking business, in the course of which he appropriated the bank funds to his own use, the claim against sureties being for the moneys so appropriated by the principal and not for losses occasioned by such illegal transactions.

(7) *London Guarantee and Accident Co. vs. Hochelaga Bank, R. J. Q. R., 3 Q.B. 25 (1893).*

The cashier of a bank removed bundles of notes from the bank premises to his residence, for the purpose of signing them, but it appeared that he brought them all back, and, subsequently, in his office in the bank, he put a number of \$5.00 notes in the bundles, instead of \$10.00 notes, and thus defrauded the bank of \$8,140.

Held, 1. In intrusting the notes to the cashier to be signed, there was no negligence on the part of the bank involving a violation of the terms of the contract, and the loss was one caused by "fraud and dishonesty amounting to embezzlement" on the part of the employee, and came under the guarantee given by the policy.

The same employee, shortly before his flight from the country, caused his own cheques to the amount of \$13,374 to be certified by the ledger-keeper of the bank, although he, the cashier, had no funds there.

2. This act, although, technically speaking, not constituting the crime of embezzlement, was "fraud and dishonesty amounting to embezzlement" on the part of the cashier, and came under the guarantee of the policy. These words in the policy have to be taken in their ordinary or vulgar sense, as otherwise the words "fraud or dishonesty" would be without effect.

3. The fact that the bank recovered a large part of the money taken did not affect its right to claim under the policy, there being a balance of total loss remaining which exceeded the amount of the policy.

4. The claim of the bank was not affected by its communications with the employee after his flight, such communications not having had any injurious effect as regards the guarantee company.

On the 30th May the cashier did not appear at his office, and a number of the cheques certified by the ledger-keeper, as above mentioned, were presented and paid, although he had no amount to his credit to check against. On the following day the bank gave notice of the defalcation to the local agent of the guarantee company—

5. The notice was given *en temps utile*, and the bank was not guilty of negligence.

31. Special General Meeting.—A special general meeting of the shareholders may be called at any time by;

(a.) The directors of the bank, or any four of them; or

(b.) Any number not less than twenty-five of the shareholders of the bank, acting by themselves or by their proxies, who are together proprietors of at least one-tenth of the paid-up capital stock of the bank;

2. **Notice.**—Such directors or shareholders shall give six weeks' previous public notice, specifying therein the object of such meeting.

3. **Place.**—Such meeting shall be held at the usual place of meeting of the shareholders.

4. **Removal of President, Vice-President or director.**—If the object of the special general meeting is to consider the proposed removal, for maladministration or other specified and apparently just cause, of the president or vice-president, or of a director of the bank, and if a majority of the votes of the shareholders at the meeting is given for such removal, a director to replace him shall be elected or appointed in the manner provided by the by-laws of the bank, or, if there are no by-laws providing therefor, by the shareholders at the meeting.

5. Choosing another President or Vice-President.—If it is the president or vice-president who is removed, his office shall be filled by the directors in the manner provided in case of a vacancy occurring in the office of president or vice-president. 53 V., c. 31, s. 24.

Notice of meeting.—Probably the only notice required for the meeting is a public notice as defined by sec. 2 (2).

As to shareholders' meetings generally, Cf. sec. 18.

The conditions for the calling of a special general meeting prescribed by this section must be strictly complied with.

The business to be transacted at the meeting should be mentioned in the notice.

Filling vacancies.—If a vacancy is created by a proceeding under this section, it may be filled in the manner provided by sec. 25.

32. One Vote for each Share.—Every shareholder shall, on all occasions on which the votes of the shareholders are taken, have one vote for each share held by him for at least thirty days before the time of meeting.

2. Ballot.—In all cases when the votes of the shareholders are taken, the voting shall be by ballot.

3. Majority to determine.—All questions proposed for the consideration of the shareholders shall be determined by a majority of the votes of the shareholders present, in person or represented by proxy.

4. Casting vote.—The chairman elected to preside at any meeting of the shareholders shall vote as a shareholder only, unless there is a tie, in which case he shall, except as to the election of a director, have a casting vote.

5. As to Joint Holders of Shares.—If two or more persons are joint holders of shares, any one of the joint holders may be empowered, by letter of attorney from the other joint holder or holders, or a majority of them, to represent the said shares, and to vote accordingly.

6. Proxies.—Shareholders may vote by proxy, but no person other than a shareholder eligible to vote shall be permitted to vote or act as proxy.

7. Officer not to vote.—No manager, cashier, clerk or other subordinate officer of the bank shall vote either in person or by proxy, or hold a proxy for the purpose of voting.

8. Renewal of Proxies.—No appointment of a proxy to vote at any meeting of the shareholders of the bank shall be valid for that purpose, unless it has been made or renewed in writing within the two years last preceding time for such meeting.

9. Calls must be paid before Voting.—No shareholder shall vote, either in person or by proxy, on any question proposed for the consideration of the shareholders of the bank at any meeting of the shareholders, or in any case in which the votes of the shareholders of the bank are taken, unless he has paid all calls made by the directors which are then due and payable. 53 V., c. 31, s. 25.

The chairman has *prima facie* authority to decide all incidental questions which arise at such meeting and necessarily require decision at the time.

The chairman has a casting vote in case of a tie (except as to a tie in the election of directors—this event being provided for by sec. 23.)

CAPITAL STOCK.

33. Increase.—The capital stock of the bank may be increased, from time to time, by such percentage, or by such amount, as is determined upon by by-law passed by the shareholders, at the annual general meeting or at any special general meeting called for the purpose.

2. Approval of Treasury Board.—No such by-law shall come into operation, or be of any force or effect, unless and until a certificate approving thereof has been issued by the Treasury Board.

3. Condition for Approval.—No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Treasury Board that a copy of the by-law, together with notice of intention to apply for the certificate has been published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate.

4. Treasury Board may refuse.—Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue such certificate if it thinks best so to do. 53 V., c. 31, s. 26.

34. Allotment to present Shareholders.—Any of the original unsubscribed capital stock, or of the increased stock of the bank, shall, when the directors so determine, be allotted to the then shareholders of the bank *pro rata*, and at such rate as is fixed by the directors: Provided that,—

(a) No fraction of a share shall be so allotted; and

(b) In no case shall a rate be fixed by the directors, which will make the premium (if any) paid or payable on such stock so allotted exceed the percentage which the reserve fund of the bank then bears to the paid-up capital stock thereof;

2. To the public.—Any of such allotted stock which is not taken up by the shareholder to whom the allotment has been made, within six months from the time when notice of the allotment was mailed to his address, or which he declines to accept, may be offered for subscription to the public, in such manner and on such terms as the directors prescribe. 53 V., c. 31, s. 27.

35. Reduction.—The capital stock of the bank may be reduced by by-law passed by the shareholders at the annual general meeting, or at a special general meeting called for the purpose.

2. Approval of Treasury Board.—No such by-law shall come into operation or be of force or effect until a certificate approving thereof has been issued by the Treasury Board.

3. Conditions for approval.—No such certificate shall be issued by the Treasury Board unless application therefor is made within three months from the time of the passing of the by-law, nor unless it appears to the satisfaction of the Board that,—

(a) The shareholders voting for the by-law represent a majority in value of all the shares then issued by the bank, and;

(b) A copy of the by-law, together with notice of intention to apply to the Treasury Board for the issue of a certificate approving thereof, has been published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in the place where the chief office or place of business of the bank is situate;

4. Treasury Board may refuse.—Nothing herein contained shall be construed to prevent the Treasury Board from refusing to issue the certificate if it thinks best so to do.

5. **Statements to be submitted.**—In addition to evidence of the passing of the by-law, and of the publication thereof in the manner in this section provided, statements showing,—

- (a.) The amount of stock issued;
 - (b.) The number of shareholders represented at the meeting at which the by-law passed;
 - (c.) The amount of stock held by each such shareholder;
 - (d.) The number of shareholders who voted for the by-law;
 - (e.) The amount of stock held by each of such last mentioned shareholders;
 - (f.) The assets and liabilities of the bank in full; and
 - (g.) The reasons and causes why the reduction is sought;
- shall be laid before the Treasury Board at the time of the application for the issue of a certificate approving the by-law.

6. The passing of the by-law, and any reduction of the capital stock of the bank thereunder, shall not in any way diminish or interfere with the liability of the shareholders of the bank to the creditors thereof at the time of the issue of the certificate approving the by-law.

7. If in any case legislation is sought to sanction any reduction of the capital stock of any bank, a copy of the by-law or resolution passed by the shareholders in regard thereto, together with statements similar to those by this section required to be laid before the Treasury Board, shall, at least one month prior to the introduction into Parliament of the Bill relating to such reduction, be filed with the Minister.

8. The capital shall not be reduced below the amount of two hundred and fifty thousand dollars of paid-up stock. 53 V., c. 31, s. 28.

SHARES AND CALLS.

36. **Shares personally.**—The shares of the capital stock of the bank shall be personal property.

2. **Books of Subscription.**—Books of subscription may be opened at the chief place of business of the bank, or at such of its branches, or at such place or places in the United Kingdom or in any of the British colonies or possessions, as the directors prescribe.

3. **Transfers.**—The shares shall be assignable and transferable at any of the places aforesaid, according to such forms and subject to such rules and regulations as the directors prescribe.

4. **Dividends.**—The dividends accruing upon any shares of the capital stock of the bank may be made payable at any of the places aforesaid.

5. **Agents.**—The directors may appoint such agents in the United Kingdom, or in any of the British colonies or possessions, for the purposes of this section, as they deem necessary. 53 V., c. 31, s. 29.

(1) *In re Central Bank*, Nasmith's case, 16 O. R. 293 (1888).

Where 10 per cent. was not paid at the time of the original subscription of bank shares, nor within thirty days thereafter, as required by the Banking Act, R. S. C., ch. 120, sec. 20, but was paid before the first transfer took place, and was accepted by the bank—

Held, that subsequent transferees of the shares were properly placed upon the list of contributories in winding-up proceedings.

The provision as to payment is for the protection of the public, and till payment is made the person subscribing may not be able to deal with the stock, but he is at least equitable owner, and may become legally entitled on making the prescribed payment.

Where the evidence showed that the bank had adopted the practice of dealing with their shares by way of marginal transfer, the first transfer being in blank, subject, as by marginal note, to the order of a broker, and the ultimate purchaser signing an acceptance in the book immediately under the transfer so signed in blank by the seller, the intermediate dealing of the broker being omitted from extended record in the bank books, and the transferees were duly entered as shareholders in the stock ledger of the bank—

Held, that this amounted substantially to an acceptance of shares transferred in blank, which was lawful where transfer by deed was not prescribed, and the entry in the stock ledger amounted to registration within the meaning of the Act.

Where it appeared that in one such case the transferee did not sign the acceptance, but that he subsequently dealt with the shares by selling and transferring them—

Held, that the transferees from him were properly placed upon the list of contributories, notwithstanding anything in the Banking Act, R. S. C., ch. 120, sec. 29.

Where one of those placed upon the list of contributories acquired his shares within one month from the suspension of the bank—

Held, that he was liable as a contributory, R. S. C., ch. 120, sec. 77, is cumulative so as to make also liable those who have been holders during the month preceding the suspension, leaving them to discuss among themselves their respective liabilities.

Where the shares which had been transferred to one placed on the list of contributories had been previously held by the cashier of the bank in trust, as alleged, for the bank, which it was objected was thus trafficking in its own shares—

Held, that, even if the cashier did hold the shares in trust for the directors of the bank, this would not be necessarily illegal, as he might have such shares, under s. 45 of the Banking Act, as security for overdue debts; and, besides, this was a matter which, though it might give the appellant a right to rescind during the currency of the banking institution, became of no moment after the rights of creditors represented by the liquidators arose. The matter was not an absolute nullity, but, at most, one which the shareholders could waive as voidable, and it became, by the suspension, of unimpeachable validity as between the appellant and the liquidators. On an appeal the judgment was confirmed. *Vide* 13 O. A. R. 209 (1891).

(2) *In re Central Bank*, Baine's Case, 16 O. A. R. 237 (1889)

One B. subscribed for certain shares of capital stock of the Central Bank of Canada, but did not at the time of the subscription, nor within thirty days thereafter, make any payment thereon. About eight months later, however, payment was made by B. to the bank, and the bank accepted payment from him of 20 p. c. of the amount subscribed, and subsequently dividend cheques were issued by the bank in favor of B., and endorsed by him, and were paid.

Held, where there is an actually signed subscription contract, an actual receipt by the bank from the subscriber of a payment on account of a number of shares equal to those mentioned therein, and a subsequent receipt by that person of dividends on that number, an acknowledgment of the subscription contract at a time within which a payment could be effectually made thereon is to be presumed, and, under the circumstances, B. and the bank were respectively estopped as against each other from denying that his

subscription was re-acknowledged, and that he had been a stockholder.

37. Payment of Shares.—The shares of the capital stock shall be paid in by such instalments and at such times and places as the directors appoint.

2. Cancellation for Non-payment.—The directors may cancel any subscription for any share unless a sum equal to ten per centum at least on the amount subscribed for is actually paid at or within thirty days after the time of subscribing.

3. Not to relieve if Bank insolvent.—Such cancellation shall not, in the event of insolvency, relieve the subscriber as hereinafter provided, from his liability to creditors. 53 V., c. 31, s. 30.

Under this section the subscriber, notwithstanding that he does not pay 10 per cent. of the amount subscribed for within 30 days after the time of subscribing, remains liable as a shareholder until his subscription is cancelled by the directors.

As the Directors appoint.—See next section, which provides for calls on shares.

As hereinafter provided.—Sub-sec. 3 refers to sec. 130, and means that even after the subscription is cancelled, the subscriber remains liable upon the shares if the bank suspends payment within 60 days after the cancellation.

38. Calls on Shares.—The directors may make such calls of money from the several shareholders for the time being, upon the shares subscribed for by them respectively, as they find necessary:

2. Intervals for Calls.—Such calls shall be made at intervals of not less than thirty days.

3. Notice.—Notice of any such call shall be given at least thirty days prior to the day on which the call is payable.

4. Limitation.—No such call shall exceed ten per centum of each share subscribed. 53 V., c. 31, s. 31.

Cf. secs. 125-130, as to calls to be made in the event of the insolvency of the bank. There is no provision in sec. 38 such as that contained in sec. 128, that any number of calls may be made by one resolution.

Probably there must be an interval of at least thirty days (i. e. thirty clear days excluding the first day and the last), between the passing of each by-law or resolution making a call, and a similar interval between each call and the day fixed for payment of such call. Cf. sec. 128.

(1) *McCracken vs. McIntyre*, 1 S. C. R. 479 (1877).

A person purchasing shares in good faith, without notice, as shares fully paid up, is not liable to an execution creditor of the company, whose execution has been returned *nulla bona* for the amount unpaid on the shares. Cf. *Bank of Liverpool vs. Bigelow*, 3 R. & C. 236, N. Sc. (1878).

(2) *Bank of Liverpool vs. Bigelow*, 3 R. & C., 236, N. Sc. (1878).

Action was brought against defendant as transferee of shares in plaintiff bank for calls. There was no valid transfer of the shares under the Act, but defendant had paid calls, given a receipt for a dividend, combined with others in appointing a proxy. *Held*, that he must be treated as a shareholder.

(3) *Gilman vs. Court*, 13 R. L. 619 (1882).

Several calls on the double liability of the shareholders can only be made by a single resolution, and the calls must be made at intervals of not less than thirty days.

When the calls have been regularly made, at sufficient intervals, but the notice of not less than thirty days has not been given be-

fore the day on which the calls are payable, the amount cannot be recovered.

(4) *Bank of Nova Scotia vs. Forbes*, 4 R. & G. 295, N. Sc. (1883).

Calls could not be legally made at one time, and none could legally be made but within ten days after the expiration of six months from the suspension of payment by the bank. And, further, that, in computing the statutory intervals between calls, the time must be reckoned exclusively of the day on which the previous call was payable.

39. Capital Lost to be Called For.—If any part of the paid-up capital is lost, the directors shall, if all the subscribed stock is not paid up, forthwith make calls upon the shareholders to an amount equivalent to the loss: Provided that all net profits shall be applied to make good such loss;

2. Returns to mention.—Any such loss of capital and the calls, if any made in respect thereof, shall be mentioned in the next return made by the bank to the Minister. 53 V., c. 31, s. 48.

Sec. 58 provides that no dividend or bonus shall ever be declared so as to impair the paid-up capital of the bank. The recoupment, as directed by sec. 39, of paid-up capital lost, is not confined to the impairment of capital by reason of the declaration of dividends or bonuses.

40. Recovery of Calls—Forfeiture.—In case of non-payment of any call, the directors may, in the corporate name of the bank, sue for, recover, collect and get in any such call, or may cause and declare the shares in respect of which any such call is made to be forfeited to the bank. 53 V., c. 31, s. 32.

Shares declared forfeited under this section must under sec. 41 be sold by the bank within six months. Sec. 41 also provides for a money penalty for non-payment of calls, the amount of such penalty to be deducted from the proceeds of the sale of the shares. See sec. 42 as to what the declaration or statement of claim in an action for calls shall contain.

See sec. 128 as to forfeiture resulting from non-payment of a call when the bank is insolvent.

(1) *Robertson vs. La Banque d'Hochelaga*, 4 L. N. 314 (1881).

Shares of bank stock cannot be declared forfeited for non-payment of calls, without first notifying the owner of the shares.

41. Fine for Failure to pay Call.—If any shareholder refuses or neglects to pay any instalment upon his shares of the capital stock at the time appointed therefor, such shareholder shall incur a penalty, to the use of the bank, of a sum of money equal to ten per centum of the amount of such shares.

2. Sale of Forfeited Shares.—If the directors declare any shares to be forfeited to the bank they shall, within six months thereafter, without any previous formality, other than thirty days' public notice of their intention so to do, sell at public auction the said shares, or so many of the said shares as shall, after deducting the reasonable expenses of the sale, yield a sum of money sufficient to pay the unpaid instalments due on the remainder of the said shares, and the amount of penalties incurred upon the whole.

3. Transfer how executed.—The president or vice-president, manager or cashier of the bank shall execute the transfer to the purchaser of the shares so sold; and such transfer shall be as valid and effectual in law as if it had been executed by the original holder of the shares thereby transferred.

4. Remission of Forfeiture or Penalty.—The directors, or the

shareholders at a general meeting, may, notwithstanding anything in this section contained, remit, either in whole or in part, and conditionally or unconditionally, any forfeiture or penalty incurred by the non-payment of instalments as aforesaid. 53 V., c. 31, s. 33.

The power to declare shares to be forfeited is given by sec. 40.

42. Recovery by Action—Allegations.—In any action brought to recover any money due on any call, it shall not be necessary to set forth the special matter in the declaration or statement of claim, but it shall be sufficient to allege that the defendant is the holder of one share or more, as the case may be, in the capital stock of the bank, and that he is indebted to the bank for a call or calls upon such share or shares, in the sum to which the call or calls amount, as the case may be, stating the amount and number of the calls.

2. Proof.—It shall not be necessary, in any such action, to prove the appointment of the directors. 53 V., c. 31, s. 34.

TRANSFER AND TRANSMISSION OF SHARES.

43. Conditions for transfer of Shares.—No assignment or transfer of the shares of the capital stock of the bank shall be valid unless,—

(a) made, registered and accepted by the person to whom the transfer is made in a book or books kept for that purpose; and

(b) The person making the assignment or transfer has, if required by the bank, previously discharged all his debts or liabilities to the bank which exceed in amount the remaining stock, if any, belonging to such person, valued at the then current rate.

2. Fraction of Share not transferable.—No fractional part of a share, or less than a whole share, shall be assignable or transferable. 53 V., c. 31, s. 35.

As to the rights and obligations of the bank in regard to transfer of shares which are subject to trusts, see sec. 52.

As to the obligation to register a transmission of shares upon proper proof of the fact of transmission, see sec. 50.

If the transfer is not registered more than 60 days before the bank suspends payment, the transferor is subject to the double liability under secs. 125 and 130.

(1) *Walsh vs. Union Bank*, 5 Q. L. R. 289 (1879).

A transfer by a father to his minor son of shares of stock in a bank, and accepted by the father in trust for his minor son, is null and void for want of legal acceptance.

(2) *Smith vs. The Bank of Nova Scotia*, 8 S. C. R. 558 (1883).

Held that a resolution passed at a special general meeting of shareholders, authorizing a loan of such sum as might be necessary to enable the bank to resume specie payments, the shareholders agreeing to hold their shares without assigning them until the loan should be fully paid, could not bind shareholders not present at that meeting, even if it had been acted upon; and under the facts disclosed in evidence the defendant could not be deprived of his legal right under the Banking Act to transfer his shares and to have the transfer recorded in the books of the bank.

(3) *Barss vs. Bank of Nova Scotia*, 6 R. & G. (Nova Scotia) 254 (1885).

The plaintiff being the holder of a number of shares in the Bank of Liverpool sold the same to S. and forwarded to him power of attorney, authorizing the registry of the transfer. At the same time

he forwarded to the manager of the bank his stock certificates to be cancelled on the transfer being registered, and notified the bank of the transfer. S. paid the consideration for the shares and received the transfer, which he forwarded to the manager, whom he requested and authorized to register his acceptance. The bank declined to register the transfer until after payment of a certain loan obtained by the Bank of Liverpool from the Bank of Nova Scotia, which had been procured in pursuance of a resolution passed at a meeting of shareholders at which plaintiff was present, and which purported to bind the shareholders to hold their shares without assigning them until the principal and interest due on such loan had been fully paid. In the meanwhile the bank retained the papers, promising that when the loan was repaid the transfer would be duly entered. Subsequently, the Bank of Liverpool became insolvent and assigned to the Bank of Nova Scotia.

Held (on the authority of *Smith vs. Bank of Nova Scotia*, 8 S. C. R. 558, there being evidence that the loan was effected on other security than the resolution, and that the resolution was never acted upon), that plaintiff was not deprived by the passage of the resolution of his legal right to transfer his shares and to have the transfer registered in the books of the bank.

44. List of Transfers.—A list of all transfers of shares registered each day in the books of the bank, showing, in each case, the parties to such transfers and the number of shares transferred, shall be made up at the end of each day.

2. For Inspection.—Such list shall be kept at the chief place of business of the bank, for the inspection of its shareholders. 53 V., c. 31, s. 36.

45. Requirements for Valid Transfer.—All sales or transfers of shares, and all contracts and agreements in respect thereof, hereafter made or purporting to be made, shall be null and void, unless the person making the sale or transfer, or the person in whose name or behalf the sale or transfer is made, at the time of the sale or transfer,—

(a) is the registered owner in the books of the bank of the share or shares so sold or transferred, or intended or purporting to be so sold or transferred; or,

(b) has the registered owner's assent to the sale;

2. Contract to state Number—The distinguishing number or numbers, if any, of such share or shares shall be designated in the contract of agreement of sale or transfer.

3. Purchasers without notice.—Notwithstanding anything in this section contained, the rights and remedies under any contract of sale, which does not comply with the conditions and requirements in this section mentioned, of any purchaser who has no knowledge of such non-compliance, are hereby saved. 53 V., c. 31, s. 37.

Sec. 133 makes a contravention of this section "an offence against this act."

A bank is, however, under no obligation to distinguish its shares by numbers.

46. Sale of Shares under execution.—When any share of the capital stock has been sold under a writ of execution, the officer by whom the writ was executed shall, within thirty days after the sale, leave with the bank an attested copy of the writ, with the certificate of such officer endorsed thereon, certifying to whom the sale has been made;

2. **Transfer, how executed.**—The president, vice-president, manager or cashier of the bank shall execute the transfer of the share so sold to the purchaser, but not until after all debts and liabilities to the bank of the holder of the share, and all liens in favour of the bank existing thereon, have been discharged as by this Act provided.

3. **Validity.**—Such transfer shall be to all intents and purposes as valid and effectual in law as if it had been executed by the holder of the said share. 53 V., c. 31, s. 38.

47. **Transmission of Shares—How authenticated.**—If the interest in any share in the capital stock of any bank is transmitted by or in consequence of—

(a) The death, bankruptcy, or insolvency of any shareholder, or;

(b) The marriage of a female shareholder; or,

(c) any lawful means, other than a transfer according to the provisions of this Act;

the transmission shall be authenticated by a declaration in writing, as hereinafter mentioned, or in such other manner as the directors of the bank require.

2. **Declaration.**—Every such declaration shall distinctly state the manner in which and the person to whom the share has been transmitted, and shall be made and signed by such person.

3. **Acknowledgment.**—The person making and signing the declaration shall acknowledge the same before a judge of a court of record, or before the mayor, provost or chief magistrate of a city, town, borough or other place, or before a notary public, where the same is made and signed.

4. **To be left with Bank.**—Every declaration so signed and acknowledged shall be left with the cashier, manager, or other officer or agent of the bank, who shall thereupon enter the name of person entitled under the transmission in the register of shareholders.

5. **Exercise of Rights as Shareholder.**—Until the transmission has been so authenticated, no person claiming by virtue thereof shall be entitled to participate in the profits of the bank, or to vote in respect of any such share of the capital stock. 53 V., c. 31, s. 29

“Transmission” in this and the next following sections is used in contradistinction to “transfer.” The latter means a transfer by the act of the holder, the former a transmission by devolution of law.

Two of the cases of transmission mentioned in this section; namely, the death of a shareholder and the marriage of a female shareholder, are further provided for by secs. 48, 50 and 51.

A bank cannot refuse to record a transmission of shares on the ground of any indebtedness or liability to the bank within sec. 43.

See sec. 49 as to the authentication of a declaration made under this section.

The bank is not obliged to see to the execution of trusts by the person to whom the shares are transmitted. See sec. 52.

48. **Transmission by Marriage of Female Shareholder.**—If the transmission of any share of the capital stock has taken place by virtue of the marriage of a female shareholder, the declaration shall be accompanied by a copy of the register of such marriage, or other particulars of the celebration thereof, and shall declare the identity of the wife with the holder of such share, and

shall be made and signed by such female shareholder and her husband.

2. If separate property of wife.—The declaration may include a statement to the effect that the share transmitted in the separate property and under the sole control of the wife, and that she may, without requiring the consent or authority of her husband, receive and grant receipts for the dividends and profits accruing in respect thereof, and dispose of and transfer the share itself.

3. Revocation.—The declaration shall be binding upon the bank and persons making the same, until the said persons see fit to revoke it by a written notice to the bank to that effect.

4. Omission not to invalidate.—The omission of a statement in any such declaration that the wife making the declaration is duly authorized by her husband to make the same shall not invalidate the declaration. 53 V., c. 31, s. 40.

The provisions of this section are supplementary to those of sec. 47.

See next section as to the authentication of a declaration made under this section.

49. Authentication of Declaration, etc., in Certain Cases.—Every such declaration and instrument as are by the last two preceding sections required to perfect the transmission of a share in the bank shall, if made in any country other than Canada, the United Kingdom or a British colony,—

(a) be further authenticated by the clerk of a court of record under the seal of the court, or by the British consul or vice-consul, or other accredited representative of His Majesty's Government in the country where the declaration or instrument is made; or,

(b) be made directly before such British consul, vice-consul or other accredited representative.

2. Further evidence.—The directors, cashier or other officer or agent of the bank may require corroborative evidence of any fact alleged in any such declaration. 53 V., c. 31, s. 39.

50. Transmission by Will or Intestacy.—If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, the probate of the will, or the letters of administration, or act of curatorship or tutorship, or an official extract therefrom, shall, together with the declaration, be produced and left with the cashier or other officer or agent of the bank.

2. Entry.—The cashier or other officer or agent shall thereupon enter in the register of shareholders the name of the person entitled under the transmission. 53 V., c. 31, s. 41.

See notes to next section.

51. Transmission by Decease.—If the transmission of any share of the capital stock has taken place by virtue of the decease of any shareholder, the production to the directors and the deposit with them of,—

(a) Any authenticated copy of the probate of the will of the deceased shareholder, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testamentative expede in Scotland, or;

(b) An authentic notarial copy of the will of the deceased shareholder if such will is in notarial form according to the law of the Province of Quebec; or,

(c) If the deceased shareholder died out of His Majesty's dominions, any authenticated copy of the probate of his will or letters of administration or his property, or other document of like import, granted by any court or authority having the requisite power in such matters shall be sufficient justification and authority to the directors for paying any dividend, or for transferring or authorizing the transfer of any share, in pursuance of and in conformity to the probate, letters of administration, or other such document as aforesaid. 53 V., c. 31, s. 42.

The provisions of this section and of section 50 are supplementary to those of 47.

(1) *Boyd vs. Bank of New Brunswick*, New Brunswick Equity Cases 545 (1891).

Under the Bank Act a bank cannot refuse to register a transfer to a purchaser by an executor of shares in the bank standing in the name of the testator, though by the testator's will the shares are specifically bequeathed.

(2) *Heneker vs. Bank of Montreal*, R. J. J., 7 S. C. 257 (1895).

Section 1 of 55-56 V., Quebec, c. 17, enacting R. S. Q. 1191 d, sub-section 5, provides, that "No transfer of the properties of any estate or succession shall be valid, nor shall any title vest in any person, if the taxes payable under this section have not been paid; and no executor, trustee, administrator, curator, heir or legatee shall consent to any transfers or payments of legacies unless the said duties have been paid."

Held, the above provision is *intra vires* of the Provincial Legislature, and a bank is therefore justified in refusing to register a transfer of shares by executors under a will, until proof is offered that the duties payable under the act above cited have been paid.

(3) *Donohue vs. La Banque Jacques Cartier*, R. J. Q., 11 S. C. 90 (1896).

Notwithstanding the fact that the sale of shares of bank stock belonging to an absent minor was made while the minor was not properly represented, such sale, when subsequently ratified by a person legally entitled to represent the minor, will not be set aside at the suit of the minor after becoming of age,—more especially where it is proved that the proceeds of the sale of shares were applied for the benefit of the minor's estate, and were entered in the account rendered by the testamentary executors and duly accepted by the tutor.

(4) *Lambe vs. Manuel*, R. J. O., 17 S. C. 184 (1900).

Held, in order that personal property should be liable for Quebec succession duties, it is necessary that it should be situate within that Province, and as property of a movable nature accompanies, in construction of law, the person of its owner, the situation of the owner's domicile at the time of his death, and not the actual local situation of the personal property itself, is the true test of its liability to duty. Hence in the present case, where the deceased was domiciled in Ontario and died there, personal property, consisting of bank shares and money lent, although actually situated in the Province of Quebec, was not chargeable with succession duty in that Province under the Act 55-56 Vict., ch. 17, as amended by 57 Vict., ch. 16.

This judgment was confirmed on appeal to the Court of King's Bench of the Province of Quebec, on the 1st March, 1901, that Court holding that the succession devolved in Ontario, and movable property, although locally situated in the Province of Quebec

at the time of the death of the testator, was constructively held to be situate in Ontario under the rule *mobilia sequuntur personam*.

This judgment was confirmed in the Privy Council:

Lambe vs. Manuel, L. R., (1903) A. C., 68.

Held, that taxes imposed on moveable property by the Quebec Succession Duty Act of 1892 and the amending Acts apply only to property which the successor claims under or by virtue of Quebec law; and have no application to the several items in this case, which formed part of a succession devolving under the law of Ontario.

SHARES SUBJECT TO TRUSTS.

52. Bank not bound to see to trusts.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share of its stock is subject.

2. Receipt.—The receipt of the person in whose name any such share stands in the books of the bank, or, if it stands in the names of more persons than one, the receipt of one of such persons, shall be a sufficient discharge to the bank for any dividend or any other sum of money payable in respect of such share, unless, previously to such payment, express notice to the contrary has been given to the bank.

3. Bank not bound.—The bank shall not be bound to see to the application of the money paid upon such receipt, whether given by one of such persons or all of them. 53 V., c. 31, s. 43.

This section refers only to trusts in regard to shares of the bank's own capital stock. It has no reference to trusts in respect of shares of other corporations taken by the bank as collateral security; see sec. 76, *infra*. For full discussion of sec. 52, see Falconbridge p. 98.

By sec. 96, a bank is not bound to see to the execution of any trust to which any deposit is subject.

(1) *Muir vs. Carter*, (1889), 16 S. C. R., 473.

The fact of bank shares being purchased in trust at a time when the trustee was solvent imports an interest in somebody else, and the onus is upon a party who has seized such shares to prove that they are in fact the property of the trustee, and as such available to satisfy the demand of his creditors. (*Sweeney vs. Bank of Montreal*, 12 App. Cas., 617 followed).

(2) *Simpson vs. Molsons Bank*, (1895), A. C. ?70.

Where a statute incorporating a bank provides that "the bank shall not be bound to see to the execution of any trust, whether express, implied or constructive, to which any of the shares of the bank may be subject," such provision must relate to, and free the bank from, liability for trusts of which the bank had knowledge or notice, as the bank could not, apart from the statute, incur liability by not seeing to the execution of a trust of which they had no knowledge.

But assuming that the bank would be liable if it were shown that they were possessed of actual notice of the trust, the facts (1) that a copy of the testator's will was in the possession of the bank; (2) that in the case of three of the testator's children, notice of the substitution of grandchildren was contained in the transfer registered by the executors in the bank's books on a previous occasion; (3) that one of the executors was president of the bank, and that the law agent of the executors was also law agent of the bank, are not sufficient to prove that the bank have received notice of the trust.

53. Executor when personally liable as Shareholder.—No person holding stock in the bank as executor, administrator, guardian, trustee, tutor or curator of or for any estate, trust or person named in the books of the bank as being so represented by him, shall be personally subject to any liability as a shareholder; but the estate and funds in his hands shall be liable in like manner and to the same extent as the testator, intestate, ward or person interested in such estate and funds would be, if living and competent to hold the stock in his own name.

2. Cestui que trust liable.—If the trust is for a living person, such person shall also himself be liable as a shareholder,

3. Executor, etc., liable if trust not named.—If the estate, trust or person so represented is not so named in the books of the bank, the executor, administrator, guardian, trustee, tutor or curator shall be personally liable in respect of the stock, as if he held it in his own name as owner thereof. 63-64 V., c. 26, s. 8.

A loan company which advances money on the security of bank shares which are transferred to it and accepted by it, in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower. (*In re Central Bank, Home Savings & Loan Co.'s Case* 1891, 18 A. R. 489.)

ANNUAL STATEMENT AND INSPECTION.

54. Statement to be laid before Annual Meeting.—At every annual meeting of the shareholders for the election of directors, the out-going directors shall submit a clear and full statement of the affairs of the bank, exhibiting, on the one hand, the liabilities of or the debts due by the bank, and, on the other hand, the assets and resources thereof.

2. Liabilities.—The statement shall show, on the one part,—

- (a) the amount of the capital stock paid in;
- (b) The amount of notes of the bank in circulation;
- (c) The net profits made,
- (d) The balances due to other banks, and
- (e) The cash deposited in the bank, distinguishing deposits bearing interest from those not bearing interest.

3. Assets.—The statement shall show, on the other part—

- (a) the amount of the current coin, the gold and silver bullion and the Dominion notes held by the bank;
- (b) The balances due to the bank from other banks;
- (c) The value of the real and other property of the bank, and
- (d) The amount of debts owing to the bank, including and particularizing the amounts so owing upon bills of exchange, discounted notes, mortgages and other securities.

4. Other Particulars.—The statement shall also exhibit—

- (a) The rate and amount of the last dividend declared by the directors;
- (b) The amount of reserved profits at the date of such statement, and
- (c) The amount of debts due to the bank, overdue and not paid with an estimate of the loss which will probably accrue thereon. 53 V., c. 31, s. 45.

As to the annual and other meetings of the shareholders, see notes to sec. 18.

See sec. 153 as to the liability for the making of a false statement.

55. Further Statements required by By-law.—The directors shall also submit to the shareholders such further statement of the affairs of the bank, other than statements with reference to the account of any person dealing with the bank, as the shareholders require by by-law passed at the annual general meeting, or at any special general meeting of the shareholders called for the purpose.

2. When to be submitted.—The statements so required shall be submitted at the annual general meeting, or at any special general meeting called for the purpose, or at such time and in such manner as is set forth in the by-law of the shareholders requiring such statements. 63-64 V., c. 26, s. 9.

Cf. sec. 113, conferring power on the Minister of Finance to call for special returns in addition to the regular monthly returns required by sec. 112.

See sec. 153, as to the liability for the making of a false statement.

56. Inspection of Books.—The books, correspondence and funds of the bank shall, at all times, be subject to the inspection of the directors:

2. Customers' accounts.—No person, who is not a director, shall be allowed to inspect the account of any person dealing with the bank. 53 V., c. 31, s. 46.

(1) *In re Chatham Banner Co., Bank of Montreal's Claim*, 2 O. L. R. 672.

The section does not enable the bank to refuse to disclose its transaction with one of its customers when the propriety of those transactions is in question in a court of law, between the bank and another customer who attacks them and who shows good cause for requiring information he seeks.

(2) *Hannum v. McRae*, 1898, 18 P. R. 185.

An officer of a bank, when served with a subpoena *duces tecum* to attend as a witness in an action, is bound, whether the bank is a party or not, to produce the bank books, specified in the subpoena which are in his custody and control, and which contain any entry relevant to the matters in question in the action. He must also give evidence as to such entries. The books of a branch bank are *prima facie* deemed to be in the custody and control of the local manager and their production within the scope of his authority.

(3) *Montgomery v. Ryan*, 1908, 16 O. L. R. 75.

It is lawful for a bank to assign its customer's account and the securities held by it, and to permit the purchaser to inspect the account.

57. Quarterly or half-yearly.—The directors of the bank shall, subject to the provisions of this Act, declare quarterly or half-yearly dividends of so much of the profits of the bank as to the majority of them seems advisable.

2. Notice.—The directors shall give at least thirty days' public notice of the payment of such dividends previously to the date fixed for such payment.

3. Books closed.—The directors may close the transfer books during a certain time, not exceeding fifteen days, before the payment of each dividend. 53 V., c. 31, s. 47.

Public Notice.—The nature of this is prescribed by sec. 2. sub-sec. 2.

Sec. 57 authorizes the payment of dividends out of profits, sec. 58 prohibits their payment so as to impair the paid-up capital, and sec. 59 forbids their being paid to an amount exceeding 8 per cent.

per annum unless a certain rest or reserve fund is maintained. The provisions of secs. 58 and 59 expressly apply to bonuses as well as dividends. A bonus is merely an extra dividend or allowance to the shareholders, and the power to declare a bonus is covered by the power to declare a dividend given to the directors by sec. 57.

58. Dividend not to impair Capital.—No dividend or bonus shall ever be declared so as to impair the paid-up capital of the bank.

2. Directors liable for such Dividend.—The directors who knowingly and wilfully concur in the declaration or making payable of any dividend or bonus, whereby the paid-up capital of the bank is impaired, shall be jointly and severally liable for the amount of such dividend or bonus, as a debt due by them to the bank. 53 V., c. 31, s. 48.

No dividend or bonus is to be declared so as to impair the paid-up capital. If the capital is impaired then all the net profits are to be applied to make up the loss, and in addition to this calls are to be made upon unpaid subscribed stock to an amount equivalent to the loss (sec. 39).

59. Dividend limited unless there is a Certain Reserve.—No division of profits, either by way of dividends or bonus, or both combined, or in any other way, exceeding the rate of eight per centum per annum, shall be made by the bank, unless, after making the same, the bank has a rest or reserve fund, equal to at least thirty per centum of its paid-up capital after deducting all bad and doubtful debts. 53 V., c. 31, s. 49.

CASH RESERVES.

60. Forty per centum in Dominion Notes.—The bank shall hold not less than forty per centum of its cash reserves in Dominion notes.

2. Supply of Dominion Notes.—The Ministers shall make such arrangements as are necessary for ensuring the delivery of Dominion notes to any bank, in exchange for an equivalent amount of specie, at the several offices at which Dominion notes are redeemable, in the cities of Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, respectively.

3. Redemption.—Such notes shall be redeemable at the office for redemption of Dominion notes in the place where the specie is given in exchange. 53 V., c. 31, s. 50.

Under the act a bank is not obliged to keep any cash reserve, but if it does do so, it must hold 40 per cent. thereof in Dominion notes.

THE ISSUE AND CIRCULATION OF NOTES.

61. Issue of Notes—Proviso.—The bank may issue and re-issue its notes payable to bearer on demand and intended for circulation: Provided that—

(a) The Bank shall not during any period of suspension of payment of its liabilities, issue or re-issue any of its notes; and

(b) if, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinafter provided for, it shall not issue or re-issue any of its notes until authorized by the Treasury Board so to do.

2. **\$5, or Multiples thereof.**—No such note shall be for a sum less than five dollars, or for any sum which is not a multiple of five dollars.

3. **Amount limited—Additional Issue during Moving of Crops**—The total amount of such notes in circulation at any time shall not exceed the amount of the unimpaired paid-up capital of the bank: Provided that, during the usual season of moving the crops, that is to say, from and including the first day of October in any year to and including the thirty-first day of January next ensuing, in addition to the said amount of notes hereinbefore authorized to be issued for circulation, the bank may issue its notes, to an amount not exceeding fifteen per centum of the combined unimpaired paid-up capital and reserve or rest fund of the bank as stated in the statutory monthly return made by the bank to the Minister for the month immediately preceding that in which the additional amount is issued.

4. **Notice of Additional Issue.**—Whenever, under the authority of the proviso to the next preceding subsection of this section, the issue of an additional amount of notes of the bank has been made, the general manager, or other chief executive officer of the bank, for the time being, shall forthwith give notice thereof by registered letter addressed to the Minister and to the president of the Canadian Bankers' Association.

5. **Interest on Additional Issue.**—While its notes in circulation are in excess of the amount of its unimpaired paid-up capital, the bank shall pay interest to the Minister at such rate, not exceeding five per centum per annum, as is fixed by the Governor in Council, on the amount of its notes in circulation in excess from day to day; and the interest so paid shall form part of the Consolidated Revenue Fund of Canada.

6. **Return by Bank.**—A return shall be made and sent by the bank to the Minister showing the amount of its notes in circulation for each juridical day during any month in which any amount of notes in excess as aforesaid has been issued or is outstanding.

7. **Time and Form of Return.**—Such return shall be made up and sent within the first fifteen days of the month next after that in which any such amount in excess has been issued or is outstanding, and shall be accompanied by declarations in the form prescribed in schedule D to this Act, and shall be signed by the persons required to sign the monthly returns made under section 112 of this Act.

8. **False Return.**—The provisions of section 153 of this Act shall apply to the return mentioned in the next preceding subsection.

9. **Bank of British North America.**—Notwithstanding anything in this section hereinbefore contained, the total amount of such notes of the Bank of British North America in circulation at any time shall not exceed seventy-five per centum of the unimpaired paid-up capital of the Bank: Provided that,—

(a) the bank may issue its notes in excess of the said seventy-five per centum upon depositing with the Minister, in respect of the excess, in cash or bonds of the Dominion of Canada, an amount equal to the excess; and the cash or bonds so deposited shall, in the event of the suspension of the bank, be available by the Minister for the redemption of the notes issued in excess as aforesaid; and

(b) the total amount of such notes of the bank in circulation at any time shall not, except as in paragraph (c) of this subsection authorized, exceed its unimpaired paid-up capital;

(c) the bank may, during the said season of moving of crops, in addition to the circulation of its notes hereinbefore in this subsection authorized, issue its notes to an amount not exceeding ten per centum of the combined unimpaired paid-up capital and reserve or rest fund of the bank as stated in the statutory return made by the bank for the month immediately preceding that in which the said additional amount is issued; and the said additional amount shall be otherwise subject to all the provisions of this section respecting circulation in addition to or in excess of the unimpaired paid-up capital permitted to other banks.

10. Calling in of Notes under \$5 or not Multiples of \$5.—All notes issued or re-issued by any bank, and now in circulation, which are for a sum less than five dollars, or for a sum which is not a multiple of five dollars, shall be called in and cancelled as soon as practicable." (As amended by 1908, c. 7, s. 1.)

Sec. 62 permits the issue of notes for one pound sterling or a multiple thereof in British possessions other than Canada. Cf. Currency Act, sec. 8.

The proviso of sub-section 1 is enforceable by penalty under sec. 138.

The limitation of the total amount of notes in circulation at any time to the amount of the unimpaired paid-up capital is enforceable by penalty under sec. 135.

The form of monthly return (Schedule D.) provides for a statement of the greatest amount of notes in circulation at any time during the month to which the return relates, and by sec. 153 the making of any wilfully false or deceptive statement in any return, etc., is made an offence.

See also secs. 63 and 139 forbidding under heavy penalties the pledging assignment or hypothecation by a bank of its notes and sec. 140 imposing a penalty for issuing with intent to defraud, or accepting with knowledge of such intent, bank notes intended for circulation and not in circulation.

62. Note Issue at Agency in British Colony other than Canada.—Notwithstanding the provisions of the last preceding section, any bank may issue and re-issue at any office or agency of the bank in any British colony or possession other than Canada, notes of the bank payable to bearer on demand and intended for circulation in each colony or possession, for the sum of one pound sterling each, or for any multiple of such sum, or for the sum of five dollars each, or for any multiple of such sum, of the dollars in commercial use in such colony or possession, if the issue or re-issue of such notes is not forbidden by the laws of such colony or possession.

2. Governor-in-Council to fix Rate for Circulation.—No issue of notes of the denomination of five such dollars, or any multiple thereof, shall be made in any such British colony or possession unless nor until the Governor-in-Council, on the report of the Treasury Board, determines the rate, in Canadian currency, at which such notes shall be circulated as forming part of the total amount of the notes in circulation within the meaning of the last preceding section.

3. Redemption.—The notes so issued shall be redeemable at par at any office or agency of the bank in the colony or possession

in which they are issued for circulation, and not elsewhere, except as in this section specially provided; and the place of redemption of such notes shall be legibly printed or stamped across the face of each note so issued

4. Redemption if Agency is abolished.—In the event of the bank ceasing to have an office or agency in any such British colony or possession, all notes issued in such colony or possession under the provisions of this section shall become payable and redeemable at the rate of four dollars and eighty-six and two-thirds cents per pound sterling, or, in the case of the issue of notes, of the denomination of five dollars, or any multiple thereof, of the dollars in commercial use in such colony or possession, at the rate established by the Governor-in-Council as required by this section, in the same manner as notes of the bank issued in Canada are payable and redeemable.

5. Total Amount of Circulation.—The amount of the notes at any time in circulation in any such colony or possession, issued under the provisions of this section, shall, at the rate mentioned in the last preceding sub-section, form part of the total amount of the notes in circulation within the meaning of the last preceding section, and, except as herein otherwise specially provided, shall be subject to all the provisions of this Act.

6. No Re-issue in Canada.—No notes issued for circulation in a British colony or possession other than Canada shall be re-issued in Canada.

7. Section limited.—Nothing in this section contained shall be construed to authorize any bank,—

(a) to increase the total amount of its notes in circulation in Canada and elsewhere beyond the limit fixed by the last preceding section; or,

(b) to issue or re-issue in Canada notes payable to bearer on demand, and intended for circulation, for a sum less than five dollars, or for a sum which is not a multiple of five dollars. 4 E. VII., c. 3, ss. 1, 2, 3 and 4.

63. Pledge, etc., of Notes prohibited.—The bank shall not pledge, assign, or hypothecate its notes; and no advance or loan made on the security of the notes of a bank shall be recoverable from the bank or its assets. 53 V., c. 31, s. 52.

This section is enforced by penalty under sec. 140.

64. Bank Circulation Redemption Fund Continued.—The moneys heretofore paid to and now deposited with the Minister by the banks to which this Act applies, constituting the fund known as the Bank Circulation Redemption Fund, shall continue to be held by the Minister for the purposes and subject to the provisions in this section mentioned and contained.

2. \$5,000 to be retained on Issue of Certificate.—The Minister shall, upon the issue of a certificate under this Act authorizing a bank to issue notes and commence the business of banking, retain, out of any moneys of such bank then in his possession, the sum of five thousand dollars, which sum shall be held for the purposes of this section, until the annual adjustment hereinafter provided for takes place in the year then next following.

3. Adjustment—5 per cent. of Average Circulation.—The amount at the credit of such bank shall, at such next annual adjustment, be adjusted by payment to or by the bank of such sum as is necessary to make the amount of money at the credit of the

bank equal to five per centum of the average amount of its notes in circulation from the time it commenced business to the time of such adjustment and such sum shall thereafter be adjusted annually as hereinafter provided.

4. **Circulation Fund.**—The amounts heretofore and from time to time hereafter paid, to be retained and held by the Minister as by this section provided, shall continue to form and shall form the Circulation Fund.

5. **Its Purposes.**—The Circulation Fund shall continue to be held as heretofore for the sole purpose of payment, in the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, of the notes then issued or re-issued by such bank, intended for circulation, and then in circulation, and interest thereon.

6. **Fund to bear Interest.**—The Circulation Fund shall bear interest at the rate of three per centum per annum.

7. **Adjustment annually.**—The Circulation Fund shall be adjusted, as soon as possible after the thirtieth day of June in each year, in such a way as to make the amount at the credit of each bank contributing thereto, unless herein otherwise specially provided, equal to five per centum of the average note circulation of such bank during the then last preceding twelve months.

8. **Average Note Circulation, how Determined.**—The average note circulation of a bank during any period shall be determined from the average of the amount of its notes in circulation, as shown by the monthly returns for such period made by the bank to the Minister; and where, in any return, the greatest amount of notes in circulation at any time during the month is given, such amount shall, for the purposes of this section, be taken to be the amount of the notes of the bank in circulation during the month to which such return relates.

9. **Rights of Minister—Proviso.**—The Minister shall with respect to all notes paid out of the Circulation Fund have the same rights as any other holder of the notes of the bank: Provided that all such notes, and all interest thereon, so paid by the Minister, after the amount at the credit of such bank in the Circulation Fund, and all interest due or accruing due thereon, has been exhausted, shall bear interest, at the rate of three per centum per annum, from the times such notes and interest are paid until such notes and interest are repaid to the Minister by or out of the assets of such bank. 53 V., c. 31, s. 54: 63-64 V., c. 26, s. 13.

65. **Notes of Bank suspending Payment to bear Interest.**—In the event of the suspension by a bank of payment in specie or Dominion notes of any of its liabilities as they accrue, the notes of the bank, issued or re-issued, intended for circulation, and then in circulation, shall bear interest at the rate of five per centum per annum, from the day of the suspension to such day as is named by the directors, or by the liquidator, receiver, assignee or other proper official, for the payment thereof.

2. **Notice of Time for Payment.**—Notice of such day shall be given by advertising for at least three days in a newspaper published in the place in which the head office of the bank is situate.

3. **As to Notes not then presented.**—If any notes presented for payment on or after any day named for payment, thereof are not paid, all notes then unpaid and in circulation shall continue to bear interest until such further day as is named for payment thereof, of which day notice shall be given in manner hereinbefore provided.

4. Notes not redeemed to be paid out of Circulation Fund.—

If the directors of the bank or the liquidator, receiver, assignee or other proper official fails to make arrangements, within two months from the day of the suspension of payment, by the bank, for the payment of all its notes and interest thereon, the Minister may make arrangements for the payment, out of the Circulation Fund, of the notes remaining unpaid and all interest thereon, and the Minister shall give such notice of the payment as he thinks expedient.

5. Interest to cease.—Notwithstanding anything herein contained all interest upon such notes shall cease upon and from the date named by the Minister for such payment.

6. Government not liable.—Nothing herein contained shall be construed to impose any liability upon the Government of Canada, or upon the Minister, beyond the amount available from time to time out of the Circulation Fund. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 11.

Cf. Winding-Up Act, R. S. C., c. 144, secs. 158, 159.

66. Payments from Fund—All payments made from the Circulation Fund shall be without regard to the amount contributed thereto by the bank in respect of whose notes the payments are made.

2. If Fund exceeded.—If the payments from the Circulation Fund exceed the amount contributed to the Circulation Fund by the bank so suspending payment, and all interest due or accruing due to such bank thereon, the other banks to which this Act applies shall, on demand, make good to the Circulation Fund the amount of the excess, proportionately to the amount which each such other bank had or should have contributed to the Circulation Fund, at the time of the suspension of the bank in respect of whose notes the payments are made: Provided that,—

(a) each of such other banks shall only be called upon to make good to the Circulation Fund its share of the excess in payments not exceeding in any one year, one per centum of the average amount of its notes in circulation;

(b) such circulation shall be ascertained in such manner as the Minister decides; and,

(c) The Minister's decision shall be final.

3. All amounts recovered and received by the Minister from the bank on account of which such payments were made shall, after the amount of such excess has been made good as aforesaid, be distributed among the banks contributing to make good such excess, proportionately to the amount contributed by each. 53 V., c. 31, s. 54; 63-64 V., c. 26, s. 12.

67. Refund of Deposit if Bank is wound up.—In the event of the winding-up of the business of a bank by reason of insolvency or otherwise, the Treasury Board may, on the application of the directors, or of the liquidator, receiver, assignee or other proper officials, and on being satisfied that proper arrangements have been made for the payment of the notes of the bank and any interest thereon, pay over to the directors, liquidator, receiver, assignee or other proper official, the amount of the Circulation Fund at the credit of the bank, or such portion thereof as it thinks expedient. 53 V., c. 31, s. 54.

68. Treasury Board Rules.—The Treasury Board may make all such rules and regulations as it thinks expedient with reference to—

- (a) The payment of any moneys out of the circulation fund, and the manner, place and time of such payments;
- (b) The collection of all amounts due to the circulation fund;
- (c) All accounts to be kept in connection therewith, and
- (d) Generally the management of the circulation fund and all matters relating thereto. 53 Vic., c. 31, s. 54.

No rules and regulations have been made by the Treasury Board under this section.

69. Minister may enforce Payments.—The Minister may, in his official name, by action in the Exchequer Court of Canada, enforce payment, with costs of action, of any sum due and payable by any bank which should form part of the Circulation Fund. 53 V., c. 31, s. 54.

70. Arrangements to be made for Circulation at Par.—The bank shall make such arrangements as are necessary to ensure the circulation at par, in any and every part of Canada, of all notes issued or re-issued by it and intended for circulation; and towards this purpose the bank shall establish agencies for the redemption and payment of its notes at the cities of Toronto, Montreal, Halifax, St. John, Winnipeg, Victoria and Charlottetown, and at such other places as are, from time to time, designated by the Treasury Board. 53 Vic., c. 31, s. 55.

A bank must ensure the circulation of its notes at par, and, if necessary for this purpose, it must establish agencies for the redemption and payment of its notes at places other than those mentioned in the section or those which may be named by the Treasury Board. No places have been designated by the Treasury Board under this section.

71. Bank must take its own Notes.—The bank shall always receive in payment its own notes at par at any of its offices, and whether they are made payable there or not.

2. At Head Office.—The chief place of business of the bank shall always be one of the places at which its notes are made payable. 53 V., c. 31, s. 56.

The obligation of this section is confined to *receiving in payment*. The section does not compel a bank to redeem its notes at any place except its head office or any other office at which such notes are payable, but cf. sec. 70.

72. Payment in Dominion Notes.—The bank, when making any payment, shall, on the request of the person to whom the payment is to be made, pay the same, or such part thereof, not exceeding one hundred dollars, as such person requests, in Dominion notes for one, two, or four dollars each, at the option of such person.

2. No Torn or Defaced Notes.—No payment, whether in Dominion notes or bank notes, shall be made in bills that are torn or partially defaced by excessive handling. 53 V., c. 31, s. 57.

73. Bonds, Obligations, etc., assignable by Endorsement.—The bonds, obligations and bills, obligatory or of credit, of the bank under its corporate seal, signed by the president or vice-president, and countersigned by a cashier or assistant cashier, which are made payable to any person, shall be assignable by endorsement thereon.

2. Bill or Notes binding though not sealed.—The bills or notes of the bank signed by the president, vice-president, cashier or other officer appointed by the directors of the bank to sign the same, promising the payment of money to any person, or to his

order, or to the bearer, though not under the corporate seal of the bank, shall be binding and obligatory on the bank, in like manner and with the like force and effect as they would be upon any private person, if issued by him in his private or natural capacity, and shall be assignable in like manner as if they were so issued by a private person in his natural capacity.

3. Directors may depute Officer to sign.—The directors of the bank may, from time to time, authorize or depute any cashier, assistant cashier or officer of the bank, or any director other than the president or vice-president, or any cashier, manager or local director of any branch or office of discount and deposit of the bank, to sign the notes of the bank intended for circulation. 53 V., c. 31, s. 58.

74. Bills may be signed by Machinery—One Signature to be hand-written.—All bank notes and bills whereon the name of any person entrusted or authorized to sign such notes or bills on behalf of the bank is impressed by machinery provided for that purpose, by or with the authority of the bank, shall be good and valid to all intents and purposes, as if such notes and bills had been subscribed in the proper handwriting of the person entrusted or authorized by the bank to sign the same respectively, and shall be bank notes and bills within the meaning of all laws and statutes whatever, and may be described as bank notes or bills in all indictments and civil or criminal proceedings whatever: Provided that at least one signature to each note or bill must be in the actual handwriting of a person authorized to sign such note or bill. 53 V., c. 31, s. 59.

75. Counterfeit or Fraudulent Notes to be stamped.—Every officer charged with the receipt or disbursement of public moneys, and every officer of any bank, and every person acting as or employed by any banker, shall stamp or write in plain letters, upon every counterfeit or fraudulent note issued in the form of a Dominion or bank note, and intended to circulate as money, which is presented to him at his place of business, the word *Counterfeit*, *Altered* or *Worthless*.

2. If Wrongfully Stamped.—If such officer or person wrongfully stamps any genuine note, he shall, upon presentation, redeem it at the face value thereof. 53 V., c. 31, s. 62.

THE BUSINESS AND POWERS OF A BANK.

76. Generally.—The bank may,—

- (a) open branches, agencies and offices;
- (b) engage in and carry on business as a dealer in gold and silver coin and bullion;
- (c) Deal in, discount, and lend money and make advances upon the security of, and take as collateral security for any loan made by it, bills of exchange, promissory notes and other negotiable securities, or the stock, bonds, debentures and obligations of municipal and other corporations, whether secured by mortgage or otherwise, or Dominion, provincial, British, foreign and other public securities;

(d) Engage in and carry on such business generally as appertains to the business of banking;

2. Exceptions.—Except as authorized by this Act, the bank shall not, either directly or indirectly,—

(a) Deal in the buying, or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;

(b) Purchase or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or,

(c) Lend money or make advances upon the security, mortgage, or hypothecation of any land, tenements, or immovable property, or, of any ships or other vessels, or upon the security of any goods, wares and merchandise. 53 V., c. 31, s. 64.

A bank chartered under the Bank Act, in addition to being a corporation with certain specified powers and subject to certain specified restrictions, is by sec. 76 of that act authorized to "engage in and carry on such business generally as appertains to the business of banking." See Falconbridge, p. 131.

The chief business and powers of a bank may be classified as follows:

1. Normally a bank is the debtor of its customer and is bound to discharge its indebtedness by honouring its customer's cheques.

As to deposits, see sec. 95 of the Bank Act. As to cheques, see the Bills of Exchange Act, Part III.

2. A bank usually undertakes expressly or impliedly to honour bills of exchange accepted by its customer, and made payable at the bank, to the extent of its customer's balance, or to an agreed amount.

3. A bank invariably acts as the collecting agent of its customer.

4. Incidentally the business of a bank as a dealer in money, etc., involves the issue in exchange for money of instruments whereby the bank in effect acknowledges its obligation to pay money to or honour drafts of the holder or other person entitled under the terms thereof, as the case may be.

Cf. sec. 76 which authorizes the bank to deal in gold and silver coins, bills of exchange, etc.

5. A bank may serve the purpose of providing the public with a paper currency in the shape of its promissory notes.

See sec. 61.

6. A bank is also a lender of money.

Sec. 76 specifies the property upon which a bank may lend.

7. A bank is sometimes the bailee of title deeds and other valuables in small compass entrusted to it by its customer for safe custody.

This section expressly authorizes a bank to do certain specified classes of acts, and forbids it to do certain other specified classes of acts—the prohibition, however, being subject to a very important qualification.

The authorized acts are as follows:—

The second part of the section is in restriction of the powers of the bank, and provides that, "*except as authorized by this Act,*" the bank shall not, either directly or indirectly:—

(a) Deal in the buying or selling, or bartering of goods, wares and merchandise, or engage or be engaged in any trade or business whatsoever;

(b) Purchase, or deal in, or lend money, or make advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank; or

(c) Lend money or make advances upon the security, mortgage, or hypothecation of any land, tenements or immoveable

property, or of any ships or other vessels, or upon the security of any goods, wares and merchandise.

Except as authorized by this Act.—The exceptions provided for by this clause are important, and are contained in the first sub-section of this section and in secs. 77-89; see especially secs. 80, 84, 86 and 88.

The prohibition is subject to sec. 80. See also sec. 77.

Share of its own capital stock or of the capital stock of any bank.—If a bank acquires shares of its own stock by forfeiture under

If a bank acquires shares of its own stock by forfeiture under sec. 40 for non-payment of calls, it is obliged under sec. 41 to sell them within six months.

Security mortgage or hypothecation of any lands, tenements, or immovable property.—The prohibition as to mortgages of real estate is subject to sec. 80.

Or of any Ships or other Vessels.—This prohibition is now subject to the provisions of sec. 85.

Goods, Wares and Merchandise.—One clause of this section forbids dealing in the buying, selling, etc., of goods. Another clause prohibits lending money on their security. The clauses are subject to the provisions of secs. 86 to 90, as well as of sec. 80.

The expression "goods, wares and merchandise" is defined by sec. 2 (f) to include, in addition to the things usually understood thereby, timber, deals, boards, staves, saw-logs and other timber, petroleum, crude oil and all agricultural produce and other articles of commerce.

(1) *Broune vs. Commercial Bank*, 10 U. C. Q. B. 129 (1852).

The plaintiffs indorsed a promissory note to the defendants for collection. The note was made by one C. C., living in Cobourg, payable to the order of one G. S. B. generally, not at any bank or other place; and from G. S. B. it had passed by several indorsements to the plaintiffs. After it had been received by the defendants, it was indorsed by their teller at Toronto in favor of J. T., their agent at Cobourg.

The different endorsers were notified by the bank that the note had been presented to the maker, and payment refused, and that the bank looked to them for payment; and the note was returned to the plaintiffs as having been duly presented.

The plaintiffs then sued the indorsers, but were defeated in their actions, in consequence of a want of proper presentment for payment.

Held, that, under the circumstances of this case, the bank were liable to the plaintiffs for such want of presentment, notwithstanding a notice issued by them, and which the plaintiffs had received, that all notes delivered to them, and that they (the defendants) would be responsible only for moneys actually received in payment of such notes, but not for any omissions, informalities, or mistakes, in respect of such notes.

(2) *Richer vs. Voyer*, L. R., 5 P. C. 461 (1874).

A bank certificate was given in the following form:—

MONTREAL, 7 Septembre, 1863.

"A. B. a déposé dans cette banque a intérêt à quatre pour cent. par an, la somme de deux mille dollars, payable à l'ordre C. D., lors de la remise du present certificat. Cette somme pour porter intérêt

devra rester au moins trois mois dans cette banque, et le porteur de ce certificat ne pourra la retirer qu'après quinze jours d'avis, l'intérêt cessant du jour de cette avis."

Quære, whether this was a negotiable instrument under Art. 2349 of the Civil Code of Lower Canada.

Under the 776th Article of the Civil Code of Lower Canada, which provides that gifts of moveable property accompanied by delivery may be made and accepted by private writings or verbal agreements, the anterior possession of property which can be the subject of *don manuel* is equivalent to delivery at the time of the gift, although the former possession was for another purpose.

The maxim of the French law—*possession vaut titre*—held not to apply where an agent held possession of a bank deposit certificate standing in the name of his principal, and bearing the principal's endorsement, the production of which certificate was required by the bank whenever interest was paid.

(3) *Lewis vs. Jeffery*, M. L. R., 7 Q. B. 141 (1875).

Where a note of a third party is transferred for valuable security, being given in payment of goods purchased, and the note is not endorsed by the transferror, a warranty is implied that the maker is not insolvent to the knowledge of the transferror.

If it be proved that the maker of the note was insolvent to the knowledge of the transferror, the party who received it is entitled to offer it back and claim the amount from the transferror, without asking for the rescission of the contract *in toto*.

(4) *Dunspough vs. Molsons Bank*, 22 L. C. J. 57 (1878).

Where a bank is induced to advance a sum of money to B. on the undertaking implied in a telegram from A. to B. and exhibited to the bank, that A. will repay the advance by accepting a draft for the amount thereof, and the advance is used to retire another draft for which A. is liable, that A. is liable to the bank for the advance, though he subsequently refuses to accept the draft.

(5) *Molsons Bank vs. Kennedy*, 10 R. L. 110 (1879).

A bank is not prohibited by the Banking Act from guaranteeing the payment of certain merchandises purchased by their customer.

(6) *The Railway & Newspaper Advertising Co. vs. Molsons Bank*, 2 L. N. 207 (1879).

A bank is not liable for calls on stock of an incorporated company held as collateral security.

(7) *Union Bank vs. Ontario Bank*, 24 L. C. J. 309 (1880).

Where a bank draws a draft for \$25 on one of its branches, and fails to advise said branch of the fact, and the draft is afterwards raised to one of \$5,000, and so skilfully as to deceive the branch office, which pays the amount of the draft as raised to another bank, holding the draft in good faith, and, in consequence of such payment, this latter bank pays \$3,500 on account thereof to the person from whom the bank received it, the former bank cannot recover from the latter bank the amount so paid to it.

(8) *Bank of Montreal vs. Geddes*, 3 L. N. 146 (1880).

Under the Banking Act of 1871, 34 Vict., ch. 5, a bank could not legally make loans upon the security of the stock of any joint stock company, except the stock of other banks, and, therefore, an action by the bank against the directors of a street railway company for loss sustained by making a loan on its stock (which was alleged to have been unduly inflated by false statements on the part of said directors) cannot be maintained.

(9) *Consolidated Bank vs. Merchants Bank*, 27 L. C. J. 370 (1882).

A letter of guarantee given to a bank, securing the payment of notes discounted by said bank, for certain firms mentioned, does not bind the guarantors to a bank constituted by the amalgamation of the said bank with another bank.

(10) *Bain vs. Torrance*, 1 Man. 32 (1884).

Plaintiff applied for payment over, by the bank, of money deposited at their branch office at Winnipeg.

Previous to the garnishee order being made, the money had been paid over by the head office at Toronto, under sequestration issued against the defendant in Ontario.

Held, following *Irwin vs. The Bank of Montreal*, 38 U. C. Q. B. 375, that a bank and its branches are but one concern, and that the application must therefore be discharged with costs.

(11) *Sweeney vs. Bank of Montreal*, 12 S. C. R. 661 (1885).

S. brought an action against the Bank of Montreal to recover the value of certain shares of stock transferred to the bank under the following circumstances:—S.'s money was originally sent out from England to J. R. at Montreal to be invested in Canada for her. J. R. subscribed for a certain amount of stock in a certain incorporated company as follows: "J. R. in trust," without naming for whom, and paid for it with S.'s money. He subsequently sent over the certificates of stock to S., and paid her the dividends he received on the stock. Becoming indebted to the Bank of Montreal, R. transferred to the manager of the bank as security for his indebtedness a certain number of S.'s shares, and the transfer showed in its face that he held these shares "in trust." The Bank of Montreal then received the dividends on these shares, credited them to J. R., who paid them to S. J. R. subsequently became insolvent, and S., not receiving her dividends as usual, sued the Bank for an account.

Held, that there was sufficient to show that J. R. was acting as the mandatary or agent of S., and the Bank of Montreal, not having shown that J. R. had authority to sell or pledge the said stock, S. was entitled to get an account from the bank.

(12) *Exchange Bank vs. Canadian Bank of Commerce*, M. L. R., 2 Q. B. 476 (1886).

Where drafts and notes are placed with a bank by a debtor of the bank, not as collateral security, but for collection, compensation does not take place until the bank has received the amounts collected by them on such notes; and in the present case, the debtor having become insolvent before any amounts were received on such notes, the compensation did not take place between the amount collected by the bank and the debt due to it. (Reversing M. L. R. 1 S. O. 225).

(13) *MacFarlane & Corporation of the Parish of St. Cesaire*, M. L. R., 2 O.B. 160 (1886).

A debenture is a negotiable instrument, and cannot bear a condition on the face of it, making its validity dependent upon obligations to be performed in future. And so where a municipal corporation voted a bonus to a railway company payable in debentures, and the by-law imposed certain future obligations upon the company as to the mode of operating the road, it was *held* that debentures in which these obligations were set forth as conditions were not a valid tender.

N.B.—This judgment was confirmed in the Supreme Court of Canada, 14 S. C. R. 738.

(14) *Exchange Bank & Montreal City and District Savings Bank*, M. L. R., 6 Q. B. 196 (1887).

A savings bank, holding bank shares as pledgee, and appearing as owner on the books of the bank, is not the owner of such shares within the meaning of section 58 of the Banking Act, 34 Vict., ch. 5, and, therefore, is not subject to the double liability.

A bank, shares of which are transferred to a savings bank, is presumed to know that the shares are held by the latter as collateral security, inasmuch as under section 18 of 34 Vict., ch. 7, a savings bank cannot acquire bank shares or hold them except as pledgee. (Affirming M. L. R. 2 S. C. 129 (1881).)

(15) *Exchange Bank vs. Nowell*, M. L. R., 3 S. C. 129 (1887).

Where a bank took a note endorsed by a customer as security for past advances, amounting to about \$10,000, and after the maturity of this note, deposits amounting to more than \$100,000, were passed to his credit in the books of the bank—

Held, that in the absence of any special imputation of payments or reserve as to the application of the subsequent deposits, these deposits were to be imputed in payment of the oldest debt, and the maker who has paid the endorser (but without obtaining possession customer's liability at the maturity of the collateral security being more than paid by the subsequent deposits, the collateral was discharged, and the bank's action against the maker and first endorser of said note would be dismissed.

(16) *Goodall vs. Exchange Bank*, M. L. R., 3 Q. B. 430 (1887).

T., a customer of the bank, discounted with that bank appellant's acceptance. When it fell due appellant failed to pay it, and the bank charged to T's account, who at the time owed the bank a small balance, which balance was augmented by subsequent transactions, wherein nevertheless, if the credits were imputed to the earliest indebtedness, the balance due when the acceptance matured would be more than covered. The bank retained possession of the acceptance, and brought this suit against appellant, the acceptor, to recover its amount. Appellant pleaded payment and compensation. *Held*, That the bank was entitled to recover from appellant the amount of his acceptance, and that appellant was not discharged by the credits in the bank's account with T.

(17) *Cleveland vs. Exchange Bank*, M. L. R., 3 Q. B. 30 (1887).

Where the amount of a note discounted by a bank for the endorser was charged on maturity to the endorser's account, and the deposits subsequently made by the endorser, as shown by the books of the bank, were more than sufficient to cover his indebtedness to the bank at the time the note matured, such note must be held to have been paid, and the bank has no action thereon against the maker who has paid the endorser (but without obtaining possession of the note); and the fact that the endorser's aggregate indebtedness to the bank continued to increase does not affect the question of payment of the note referred to in the absence of a reserve of recourse by the bank thereon.

(18) *Bank of Montreal vs. Sweeney*, 12 A. C. 617 (1887).—*Held*, by the Privy Council, affirming the judgment of the Superior Court of Canada.

A holder of shares "in trust" is not a *manditaire*, *prete-nom*, and holds subject to a prior title on the part of some person undisclosed. Such holding not being forbidden by the law of the colony, a transferee from such holder is bound to enquire whether the transfer is authorized by the nature of the trust.

(19) *Maritime Bank vs. Union Bank*, M. L. R., 4 S. C. 244 (1888).

A bank acting as agent for another bank is not authorized in the absence of express agreement, to cash a cheque drawn upon the principal bank, but unaccepted by it.

A telegram from the president of the principal bank to a depositor therein, stating that certain funds are at his credit, is not an acceptance of a cheque drawn by the depositor upon the receipt of such telegram for the amount of the funds, such telegram adding nothing to the legal obligation of the principal bank towards the depositor to pay the cheque when duly presented for payment, if there were then funds at his credit to meet it and no legal hindrance to its payment existed.

No compensation arises between the principal bank and its agent, entitling the latter to set off moneys paid under an unaccepted cheque upon the principal bank against moneys held by the agent and due to the principal bank.

A custom of bankers cannot be put in evidence unless it has been specially pleaded.

(20) *Merchants' Bank & McKay*, 15 S. C. R. 672 (1888).

McKay gave a mortgage to the Merchants' Bank as security for the present indebtedness of, and future advances to, a customer of the bank. By the terms of the mortgage McKay was to be liable, amongst other things for the promissory notes, etc., of the customer outstanding at the date of the mortgage, and all renewals, alterations and substitutions thereof.

Held, That the bank having given up the said promissory notes, etc., and accepted as renewals thereof, forged and worthless paper, McKay was, to the extent of such worthless paper, relieved from liability as such surety:

Held, That the bank having accepted the renewals in the ordinary course of banking business, and it not being shown that they were guilty of negligence, the surety was not relieved.

(21) *Bank of Montreal vs. Thomas*, 16 O. R. 503 (1888).

On the maturity of a bill of exchange, the drawers thereof, thinking the acceptor would be unable to meet it, telegraphed him, that if unable to pay it to draw on them for the amount. The acceptor took the telegram to the manager of the bank, who, on the faith of it, discounted a sight draft by the acceptor on the drawers, with the proceeds of which he retired his acceptance, which was held by another bank. The drawers refused to accept the bill so drawn.

Held, that the telegram having been sent for the purpose of inducing persons to advance money on it, and to take the bill so drawn in pursuance of it, a privity was created between the bank which discounted it and the senders of the telegram, entitling the former to maintain an action against the latter for the money so advanced.

(22) *Black vs. The Bank of Nova Scotia*, 21 N. Sc. 448 (1889).

The Bank of Liverpool being indebted to defendant bank in the sum of \$80,000, agreed to pay the amount in instalments, plaintiffs, among others, being sureties for three instalments, amounting to \$60,000. Acceptances held by the Liverpool Bank were placed with the defendant bank as collateral security for the last of the instalments on which plaintiffs were liable, and were collected by defendant bank, but were afterwards appropriated by defendant bank to a different indebtedness. Plaintiffs, in ignorance of the appropriation first mentioned, paid in 1879 a balance of \$9,772.30 demanded from them, and on afterwards discovering the facts as to the appropria-

tion and payment, brought the present action to recover it back as paid under mistake of fact.

Held, that the amount having been appropriated in the first instance to the debt on which plaintiffs were sureties, no other appropriation could be made without plaintiffs' consent; that plaintiffs were not estopped on account of their not having demanded an investigation of the state of the accounts before paying, nor by the fact that when called on to pay they requested further time and made use of it to obtain securities from the Liverpool Bank; that defendants could not set up that they had been prejudiced by plaintiffs' payment, in their dealings with the insolvent bank, as the facts of the matter were within their knowledge and not in the knowledge of the plaintiffs; that plaintiffs were not bound to tender to defendants before action the bond of the Liverpool Bank which had been assigned to plaintiffs for the reason, among others, that it had been paid off by the money so appropriated, and was valueless.

(23) *Johansen vs. Chaplin*, M. L. R., 6 Q. B. 111 (1889).

A bank is not authorized to enter into a contract of suretyship guaranteeing the payment by a customer of the hire of a steamship under a charter party. (And see *Watts vs. Wells*, M. L. R., 7 Q. B. 387.)

(21) *Landry vs. The Bank of Nova Scotia*, 29 N.B. 564 (1889).

The plaintiffs drew and endorsed a bill of exchange and delivered it to the defendants to discount, which they agreed to do if the bill was accepted. After acceptance the defendants refused to give the plaintiff either the proceeds or the bill, claiming the right to apply it to the payment of a debt which the plaintiffs owed them.

Held, that the defendants were liable in trover for a conversion of the bill.

A discount means an advance of money, upon the transfer of a negotiable instrument to the bank, payable at a future day, as security.

(25) *Thompson vs. Molsons Bank*, 16 S. C. R. 664 (1889).

The Molsons Bank took from H. & Co. several warehouse receipts as collateral security for commercial paper discounted in the ordinary course of business, and having a surplus from the sale of the goods represented by the receipts, after paying the debts for which they were immediately pledged, claimed under a parole agreement to hold that surplus in payment of other debts due by H. & Co. H. & Co., having become insolvent, Thompson, as one of the creditors, brought an action against the bank claiming that the surplus must be distributed rateably among the general body of creditors.

Held, that the parol agreement was not contrary to the provisions of the Banking Act, R. S. C., ch. 120, and that after the goods were lawfully sold the money that remained, after applying the proceeds of each sale to its proper note, could properly be applied by the bank under the terms of the parol agreement.

(26) *Re Central Bank, Morton and Black's Claims*, 17 O.R. 574 (1889).

An incorporated bank, by its cashier, issued deposit receipts in the following form: "Received from _____ the sum of \$ _____, which this bank will repay to the said _____ or order, with interest at 4 per cent. per annum, on receiving 15 days' notice. No interest will be allowed unless the money remains with the bank six months. This receipt to be given up to the bank when payment of either principal or interest is required."

Held, that it was competent under the Banking Act, R. S. C., ch. 120, to issue such deposit receipts, and that even if they did not possess all the incidents of promissory notes, yet being meant to be transferred by indorsement, they were so far negotiable as to pass a good title to a *bona fide* purchaser for value, taking without notice of any infirmity of title.

But, *semble*, that these deposit receipts were negotiable instruments under which the holders were entitled to recover as upon a promissory note made by the bank.

(27) *McDonald vs. Rankin*, M. L. R., 7 S. C. 44 (1890).

The action of a shareholder of a bank against the directors, to recover loss occasioned by their gross negligence and mismanagement, being an action of mandate, is prescribed only by thirty years.

The action against the directors for maladministration appertains to the corporation, but in default of suit by the corporation it is competent to the shareholder to institute it.

Directors of a corporation are bound to exercise the care of a prudent administrator in the management of its business. Such acts as allowing overdrafts by insolvent persons without proper security, the impairment of the capital of the bank by the payment of unearned dividends, the furnishing of false and deceptive statements to the Government, the expenditure of the funds of the bank in the legal purchase of its own shares, are acts of gross mismanagement amounting to dol, and render the directors personally liable, jointly and severally, for losses sustained by the shareholders by reason thereof.

Directors cannot divest themselves of their personal responsibility. While they are at liberty to employ such assistants as may be required to carry on the business of the corporation, they are, nevertheless, responsible for the fault and misconduct of the employees appointed by them, unless the injurious acts complained of be such as could not have been prevented by the exercise of reasonable diligence on their part.

(28) *Montreal City and District Savings Bank vs. Geddes*, M. L. R., 6 S. C. 243 (1890).

A creditor is not obliged to sell his pledge before bringing an action of damages against the directors of a corporation indebted to him for making false statements.

(29) *Watts vs. Wells*, M. L. R., 7 Q. B. 387 (1890).

A bank cannot validly enter into a contract of suretyship, guaranteeing the payment by a customer of the hire of a steamship under a charter party; and where the bank has derived no benefit from such contract, a claim made thereon against the bank in liquidation will be dismissed.

(30) *La Banque Nationale vs. Merchants' Bank*, M. L. R., 7 S. C. 336 (1891).

A custom of trade or banking in derogation of the common law must be strictly proved. And where a bank sought to excuse itself from taking back an unaccepted cheque on another bank, which had been sent into the clearing house in the morning, on the ground that by a rule of the association a cheque for which there were no funds should be returned to the presenting bank before noon of the day of presentation, whereas the cheque in question was not offered back until 3.30 p.m., and it appeared that the rule in question was of a temporary character only, and was not usually followed by the banks which belonged to the Clearing House Association, it was

held that such rule could not derogate from the ordinary rule of law as to the return of cheques for which there are no funds.

(31) *Petry vs. La Caisse d'Economie de Quebec*, 19 S. C. R. 713 (1891).

The curator to the substitution of W. Petry paid to the respondents the sum of \$8,632 to redeem 34 shares of the capital stock of the Bank of Montreal, entered in the books of the bank in the name of W. G. P. in trust, and which the said W. G. P., one of the *greves* and managers of the estate, had pledged to respondents for advances made to him personally. J. H. P. *et al*, appellants, representing the substitution, by their action demanded to be refunded the money which they alleged H. J. P., one of them, had paid by error as curator to redeem shares belonging to the substitution. The shares in question were not mentioned in the will of William Petry, and there was no inventory to show they formed part of the estate, and no *acte d'emploi* or *remploi* to show that they were acquired with the assets of the estate.

Held, that the debt of W. G. P. having been paid by the curator with full knowledge of the facts, the appellants could not recover. Arts. 1047, 1048 C. C.

Bank stock cannot be held as regards third parties in good faith to form part of substituted property on the ground that they have been purchased with the moneys belonging to the substitution without an act of investment in the name of the substitution and a due registration thereof. Arts. 931, 938, 939 C. C.

(32) *Central Bank vs. Garland*, 20 O. R. 142 (1891).

A tradesman sold goods to customers, taking promissory notes for the price, and also hire receipts by which the property retained in him till the full payment was made. The notes were discounted through the medium of a third person by the plaintiffs, who were made aware when the line of discount was opened of the course of dealing and of the securities held. They were not, however put in actual possession of the securities, and there was no express contract in regard to them. In an action to recover the securities or their proceeds from the assignee for creditors of the tradesman, *held*, that the securities were accessory to the debt, that in equity the transfer of the notes was the transfer of the securities, that the defendant was in no higher position than his assignor, and could not resist the claim to have the receipts accompany the notes, and that it was not material that the relation of assignor and assignee did not immediately exist between the tradesman and the plaintiffs.

(33) *Molsons Bank vs. Carscaden*, 8 Man. 451 (1892).

A firm of contractors agreed with S that, if he would endorse their notes to the Molsons Bank to the amount of \$10,000, they would give an assignment to the bank of all moneys to be payable to them from a railway company on contracts made and to be made by them with the railway company to secure the notes. They also agreed with the bank that in consideration of an advance to them of the money upon their notes endorsed by S., they would assign to the bank the said moneys, and gave to N., the bank manager, a power of attorney authorizing him to collect from the railway company the said moneys. S. endorsed the notes and the moneys were advanced.

Held, that this transaction amounted to an equitable assignment to the bank for the moneys in question.

Held also, that moneys arising out of future contracts can be assigned.

Held also, that it is within the powers of incorporated banks to make advances upon the security of any *choses in action*, except in so far as the Banking Acts expressly exclude such transactions.

(34) *Re The Essex Land & Timber Co. Trout's Case*, 21 O. R. 367 (1892).

On a petition by a mortgagee in the winding-up proceedings of a company, under R. S. C., ch. 129, asking for the conveyance to him by the liquidator of the company's equity of redemption, the court has jurisdiction to make the usual order for foreclosure or sale.

It is a matter of discretion with the court whether an action will be directed or summary proceedings sanctioned.

A mortgage upon land given to secure endorsements upon negotiable paper to be made by the mortgagee for the benefit of the mortgagor becomes operative only upon the endorsements being made; and an assignment of such mortgage to a bank before the making of the endorsements is not a violation of section 45 of the Banking Act, R. S. C., ch. 120.

(35) *Re Central Bank, Canada Shipping Co.'s Case*, 21 O. R. 515 (1892).

A bank in this Province, under an agreement with a customer, domiciled here, advanced money to him to enable him to buy cattle in this Province, which, under the agreement, when purchased, were to be forwarded by rail to him at Montreal, and to be shipped by steamship to Liverpool, the bank having no control over the cattle until they reached the vessel, when they were to be received by the steamship for the bank, and the customer's possession and control over them was to end; bills of lading therefor in favor of the bank being then signed. The cattle were purchased and sent to Montreal as agreed on. On arriving at the steamship, and before the bills of lading were made out, a creditor of the customer attached the cattle under a writ of *saisie-arret*, but the steamship owners, disregarding the writ, signed the bills of lading and conveyed the cattle to their destination. The creditor subsequently recovered a judgment for the value of the cattle in the Province of Quebec, against the steamship owners, which the latter having paid, sought to prove on the estate of the bank in winding up proceedings, but the claim was disallowed by the master.

On appeal:—

Held, that, apart from the Banking Act, R. S. C., ch. 120, by virtue of the agreement between the bank and its customer, the possession and a special property in the goods passed to the bank, of which the steamship owners were aware, and having assented thereto upon receipt of the cattle, before any process was served, must be taken to have held the cattle for the bank.

Held, also, that the rights of the parties were entirely governed by the provisions of the Banking Act and following, though not altogether approving, *Merchants' Bank vs. Suter*, 24 Gr. 356, that under sec. 53, sub-sec. 4 of the Act, the bank had, under the agreement and the facts proved, an equitable lien upon the cattle from the time of the making of the agreement, which prevailed over the attachment.

Held, lastly, that the bank "acquired" the bills of lading within the meaning of the Banking Act as soon as the cattle were received by the steamship, although it did not at that time actually "hold" the bills.

(36) *Pacaud vs. La Banque du Peuple*, R. J. Q., 3 S. C. 8 (1893).

The pledgee who applies to his own uses a sum of money pledge-

ed as security for the payment of a note is guilty of an abuse of the pledge, within the meaning of Article 1975 of the Civil Code, sufficient to justify the pledgor in demanding repayment of such money with interest.

Where the return of money pledged as security for the payment of a note is conditioned upon the collection by the pledgee of the amount of such note, the fact that he has been himself the means of preventing the collection of the note (as by releasing one of the parties thereto, the others being solvent) will make the conditional obligation (to return the money) absolute.

A bank is bound by the entries in its books, and especially in its customers pass-books, at least in the absence of other proof of error.

(37) *La Banque du Peuple & Pacaud*, R. J. Q., 2 Q. B. 424 (1893).

A bank which, in discounting a note, receives from a third party its value in pledge as collateral security for its payment, on the condition that it will use diligence to recover the amount of the note from the maker and the endorser before realizing the value, violates this condition in accepting a renewal of the note and in treating with one of the endorsers for his discharge for a partial payment, giving him thus a means of contestation of the action which it has against him. The owner of the value put in pledge is from that time entitled to recover from the bank, followed in *Friedman vs. Caldwell*, R. J. Q., 3 Q. B. 200 (1894).

(38) *Brush vs. Molsons Bank*, R. J. Q., 3 Q. B. 12 (1893).

Appellant on the 22nd March, 1886, addressed the following letter to the bank respondent:—

"In consideration of your making advances to W. C. Hibbard upon his drafts upon W. R. Hibbard, and accepted by the latter to the extent of \$6,000, I hereby guarantee you, the said bank, the due payment of all sums at any time due and owing to you, the said bank, from the said W. C. Hibbard, under said drafts, not exceeding the sum of \$6,000, and any interest and costs which may accrue thereon, and that no payment received by you from said W. C. Hibbard, or otherwise, shall be taken in reduction of my liability upon this guarantee, and that you may give any time to, or take any security from, or accept any composition from said W. C. Hibbard, or any of the parties to any bills, drafts, notes or cheques discounted or held by you as aforesaid, without prejudice to your claim upon me under this guarantee. And I further agree that all dividends, compositions and payments received from him, them or any of them, or his or their representatives, shall be taken and applied as payment in gross, and that this guarantee shall apply to and secure any ultimate balance that shall remain due to you, the said bank, under said drafts. And I further agree that this guarantee shall be a continuing guarantee for an amount not exceeding the said sum of \$6,000 due to you from the said W. C. Hibbard for any or all of the causes aforesaid, and shall remain in force until revoked by written notice to the said Molsons Bank, and that the same shall not be revoked by my death."

Upon receipt of this letter, respondent advanced to W. C. Hibbard \$6,000 in three sums, upon his drafts upon W. R. Hibbard and accepted by the latter. These drafts were renewed from time to time as they became due, by similar drafts which were similarly renewed when they became due until 1889. In 1888, Hibbard closed his account with the bank, drew out his balance, \$88, and went out of business. In an action by the bank against the appellant, for the

amount of the draft as representing the balance due upon advances made under the letter of guarantee—

Held, 1. The guarantee, being a continuing guarantee for the amount, was not restricted to the original drafts, but extends to those by which they were renewed, until revoked by written notice.

2. The fact that Hibbard closed his account and drew out his balance did not affect the case, as it did not appear that any draft was then due, to which the balance could be applied.

(39) *Banque Jacques Cartier vs. The Queen*, R. J. Q., 8 S. C. 346 (1893).

Petition of right claiming the amount due on a letter, usually styled a letter of credit, given by the Provincial Secretary to one D., to enable him to execute a printing contract with the government, and transferred to petitioners.

Held, that it was not competent to the Provincial Secretary, by this letter of credit, to bind the province to the payment of any advances to the said D., and that though the subsequent voting by the legislature of an item in the Estimates and Supply Act may have empowered the Executive to pay the amount for which the letter had been signed, it did not impose on it any obligation so to do, nor confer on petitioners any right to enforce payment.

(40) *Ward vs. Quebec Bank*, R. J. Q., 3 Q. B. 122 (1894).

Where a note is received as collateral security from a holder in due course, before maturity, and without notice of any defect in the title of the person who negotiated it, the creditor has all the rights of such holder as regards all parties prior to him, and he can recover the amount of the note from such prior parties. Where the sum secured is less than the amount of the note, the pledgee, as regards the surplus, sues as trustee for the pledgor and can recover if the latter could do so.

(41) *Macnider vs. Young*, R. J. Q., 3 Q. B. 539 (1894).

The sale and transfer of instruments of no intrinsic value, but evidences of value, as notes, bills of exchange, bank bills, bills of lading, warehouse receipts, bonds and debentures, is not subject to Arts. 1487, 1488 and 1490 C. C. Such instruments, when payable to bearer, require no other evidence of proprietorship than simple possession, against which the only practically effective plea is bad faith in the holder, and the burden of proof is on the party who sets it up. In the absence of such allegation and proof, the owners of debentures pledged, without authority, by their agent, as security for a loan to himself by a broker, cannot revendicate them in the hands of the latter.

The fact that when they were pledged, the debentures had matured and were past due is immaterial, and does not affect the right of ownership of those who, as the parties in this case are not liable, either as makers or endorsers, for the payment thereof.

(42) *Henderson vs. Bank of Hamilton*, 25 O. R. 641 (1894).

The damages recoverable by a non-trading depositor in a savings bank who has made his deposit subject to special terms, on a wrongful refusal of the bank to pay it to him personally, are limited to the interest on the money.

On an appeal this judgment was confirmed, 220 A. R. 414.

(43) *Rolland et al. vs. La Caisse d'Economie Notre Dame de Quebec*, 24 S. C. R. 405 (1895).

L. borrowed a sum of money from a savings bank, which he agreed to repay with interest, transferring in pledge as collateral security letters of credit on the Government of Quebec. L. having

become insolvent, the bank filed its claim for the amount of the loan, with interest, with the curator of the estate, and on appeal, the appellants, as creditors of L., contested on the ground that the said securities were not of the class mentioned in the Act relating to savings banks (R. S. C., c. 122, s. 20), and the bank's act in making the said loan was *ultra vires* and illegal.

Held, that assuming that the act of the bank in lending the money on the pledge of such securities was *ultra vires*, although this might affect the pledge as regards third parties interested in the securities, it was not, of itself, and *ipso facto*, a radical nullity of public order of such a character as to disentitle the bank under Arts. 989 and 990 C. C. from claiming back the money with interest. *Bank of Toronto vs. Perkins* (8 Can. S. C. R. 903), distinguished.

(44) *Jacques Cartier Bank vs. The Queen*, 25 S. C. R. 84 (1895).

The Provincial Secretary of Quebec wrote the following letter to D. with the assent of his colleagues, but not being authorized by order in council:

"J'ai l'honneur de vous informer que le gouvernement fera voter, dans le budget supplémentaire de 1891-92, un item de six mille piastres qui vous seront payées immédiatement après la session, et cela à titre d'acompte sur l'impression de la "Liste des Terres de la Couronne, concédées depuis 1763, jusqu'au 31 décembre, 1890." dont je vous ai confié l'impression dans une lettre en date du 14 janvier, 1891.

"Cette somme de six mille piastres sera payée au porteur de la présente lettre, revêtue de votre endossement."

D. indorsed the letter to a bank as security for advance to enable him to do the work.

Held, that a bank cannot deal in such securities as the said letter of credit which is dependent on the vote of the legislature, and therefore not a negotiable instrument within the Bills of Exchange Act of 1890 or The Bank Act, R. S. C., ch. 120, secs. 45 and 60.

(45) *Donough vs. Gillespie*, 21 O. A. R. 292 (1895).

Bankers are subject to the principles of law governing ordinary agents, and, therefore, bankers to whom as agents a bill of exchange is forwarded for collection, can receive payment in money only and cannot bind the principals by setting off the amount of the bill of exchange against a balance due by them to the acceptor.

(46) *La Banque Ville Marie vs. Mayrand*, R. J. Q., 10 S. C. 460 (1896).

A bank having discounted a note signed by M. and endorsed by the defendant, a public trader, acting by her husband who was her attorney for the purposes of her business; the proceeds of the discount were entered in the books of the bank to the credit of M., and it was proved that the female defendant had received no consideration.

Held, that the endorsement of the note exceeded the power of the defendant's husband, and that the bank having paid the proceeds of the discount to the maker of the note who was clearly not doing the same business as the defendant, on a note signed, not by the latter, but by her attorney, had no action against the defendant, it being understood that she had received no consideration for the note.

(47) *Cooper vs. Molsons Bank*, 26 S. C. R., 611 (1896).

If a merchant obtains from a bank a line of credit on terms of depositing his customers' notes as collateral security, the bank is not obliged, so long as the paper so deposited remains uncollected, to give any credit in respect of it, but when any portion of the col-

laterals is paid, it operates at once as payment of the merchant's debt, and must be credited to him.

(48) *Insky vs. Hochelaga Bank*, R. J. Q., 10 S. C. 510 (1896).

The agreement between a merchant and a bank that the deposits made by the merchant would be kept by the bank to guarantee the payment of promissory notes bearing the former's signature, and discounted by the bank, is a commercial transaction which can be proved by witnesses.

The plaintiffs, under telegraphic instructions from one of their branches, telephoned from the head office to one of their sub-agencies to credit the defendant with \$2,000. The sub-agency, however, by some misunderstanding, credited him with \$3,000, which he drew out. The \$2,000 had been paid into the branch bank in the first instance by way of an advance on the shipping bills of certain cattle bought from the defendant for about \$2,800, but of this the plaintiffs had no notice. The defendant, however, refused to pay the difference between the \$2,000 and the price of the cattle, on the ground that in faith of the payment to him he had allowed them to be shipped abroad, which by his agreement for sale was not to be done till payment of the price in full.

Held, that the defendant was bound to repay the excess over the \$2,000.

(50) *Litman vs. Montreal City and District Savings Bank*, R. J. Q., 13 S. C. 262 (1897).

Where a bank receives a note for collection, and in the regular course of business places the same in the hands of a responsible and perfectly solvent agent, it is not liable for the loss of the note in the mails. In any case the defendant's offer to give security to the makers and endorser that they would never be troubled if they paid the note, was sufficient.

(51) *Merchants' Bank of Canada vs. Darveau*, R. J. Q., 15 S. C. 326 (1898).

The Adams Shoe Company shipped goods to a Toronto house. Drafts were drawn for the price of such goods and discounted by the Merchants' Bank. As security for these advances, not only the title to the drafts was transferred to the bank, but also the claim against the Toronto house for the price of the goods shipped and whose value the drafts represented.

Held:—There is no prohibition in the Banking Act against taking as security, for advances made by a bank, the transfer of a certain debt, and the same is permitted. Consequently, the transactions above mentioned were valid and within the legal powers of the bank.

(52) *Richards vs. Bank B. N. A.*, 8 B. C., L. R., 143 (1901).

Where the members of a firm have separate private accounts with the bankers of the firm, and a balance is due to the bankers from the firm, the bankers have no lien for such balance on the separate accounts.

77. Bank to have Lien upon Stock of its Debtors.—The bank shall have a privileged lien, for any debt or liability for any debt to the bank, on the shares of its own capital stock, and on any unpaid dividends of the debtor or person liable, and may decline to allow any transfer of the shares of such debtor or person until the debt is paid.

2. Sale of Shares—Notice.—The bank shall, within twelve months after the debt has accrued and become payable, sell such shares: Provided that notice shall be given to the holder of the

shares of the intention of the bank to sell the same, by mailing the notice, in the post office, post paid, to the last known address of the holder, at least thirty days prior to the sale.

3. **Transfer.**—Upon the sale being made, the president, vice-president, manager or cashier shall execute a transfer of the shares to the purchaser thereof in the usual transfer book of the bank.

4. **Effect of Transfer.**—Such transfer shall vest in the purchaser all the rights in or to the said shares which were possessed by the holder thereof, with the same obligation of warranty on his part as if he were the vendor thereof, but without any warranty from the bank or by the officer of the bank executing the transfer. 53 V., c. 31, s. 65.

The bank is by sec. 145 liable to a penalty, if it neglects to sell such shares within 12 months or if it sells them without 30 days' previous notice in writing to the holder of the shares.

Cf. secs. 43 and 44, which impliedly preserve the bank's lien in case of attempted transfer by the debtor, or of a sale under a writ of execution, of the shares to which the lien extends.

The bank also has in the absence of any inconsistent special agreement a general lien for all that is due to it from the customer. The lien extends to all the securities and moneys of the customer in its hands which have not been deposited for a particular purpose, but not to property merely deposited for safekeeping.

The general lien exists only for debts due to the bank, whereas the statutory lien upon its own shares covers not only any debt, but also any liability for a debt.

(1) *In re Chicic & Union Bank vs. Rattray*, 14 Q. L. R. 289 (1888).

Under R. S. C., ch. 120, sec. 89, a bank has a lien on the stock held in it by a member of a firm for a debt due to it by such firm.

When a debt is due a bank, and the debtor acquires stock in the same, such stock is at once affected by the lien of the bank, and moneys realized by the bank out of such stock may be applied by it to the payment of said debt, in preference to another debt contracted subsequently by the same debtor.

Under the common law of the Province of Quebec, a creditor claiming against the estate of a joint debtor is bound to give credit for whatever he may have received for his other joint debtors.

78. **Collateral Securities may be sold.**—The stock, bonds, debentures or securities, acquired and held by the bank as collateral security, may, in case of default in the payment of the debt, for securing of which they were so acquired and held, be dealt with, sold and conveyed either in like manner and subject to the same restrictions as are herein provided in respect of stock of the bank on which it has acquired a lien under this Act, or in like manner as and subject to the restrictions under which a private individual might in like circumstances deal with, sell and convey the same. Provided that the bank shall not be obliged to sell within twelve months:

2. **Right of Sale may be waived.**—The right so to deal with and dispose of such stock, bonds, debentures or securities in manner aforesaid may be waived or varied by any agreement between the bank and the owner of the stock, bonds, debentures or securities, made at the time at which such debt was incurred, or, if the time of payment of the debt has been extended, then by an agreement made at the time of the extension. 53 V., c. 31, s. 66.

In the event of default in repayment of an advance made upon the security of stock of corporations other than the bank or upon other security, the bank has a power of sale similar to that which

it has in regard to shares of its own stock upon which it has acquired a privileged lien under sec. 77, but without obligation to sell the same within 12 months. This obligation is designed only to prevent a bank's dealing in its own stock as prohibited by sec. 76.

See also sec. 80, which confers the same rights upon the bank in regard to personal or movable property as in regard to real or immovable property mortgaged or hypothecated to it. These rights include the power to purchase or sell given by sec. 81.

A bank selling under the first part of this section merely transfers the right of the pledger and a warranty of title by him, but gives no such warranty itself (see sec. 77). The case is different, however, when the bank sells pursuant to sec. 89.

(1) *Union Bank vs. Elliott*, 14 Man., L. R. 187.

A creditor who has received collaterals as security for a debt is bound, after payment of the debt, to return them or account to the debtor for their face value, in the absence of evidence to show that the respective amounts of them could not be collected.

Driffl vs. McFall, 41 U. C. R., 313 followed.

79. Acquisition of Real Estate.—The bank may acquire and hold real and immovable property for its actual use and occupation and the management of its business, and may sell or dispose of the same, and acquire other property in its stead for the same purpose. 53 V., c. 3, s. 67.

80. Mortgages and Hypothèques of Realty.—The bank may take, hold and dispose of mortgages and *hypothèques* upon real or personal, immovable or movable property, by way of additional security for debts contracted to the bank in the course of its business.

2. As to personality.—The rights, powers and privileges which the bank is by this Act declared to have, or to have had, in respect of real or immovable property mortgaged to it, shall be held and possessed by it in respect of any personal or movable property which is mortgaged or hypothecated to the bank. 53 V., c. 31, s. 68.

The section is one of the important exceptions to the prohibition of sec. 76 against lending on the security or mortgage of lands, ships or goods.

Primarily "contracted in the course of its business" means contracted in the past, and refers to advances made or indebtedness incurred prior to the giving of the mortgage.

Sometimes, however, it is sought to support a mortgage which is taken contemporaneously with the discounting of a bill or note. In such a case it has been said that it would be a question of fact for the judge or jury to determine whether the mortgage was in truth taken to secure the transaction on the bill or note, or whether the bill or note was created for the mere purpose of upholding and giving colour to the mortgage—a question of fact upon which the conclusion would be in general so uncertain as to make the mortgage very doubtful security.

(1) *Bank of Upper Canada vs. Killaly*, 21 U. C. Q. B. 9 (1861).

One P., in January, 1860, agreed to build for the Grand Trunk Railway Co. 100 cars of a specified pattern to be delivered in four months and a half from that time on their track at Toronto free of charge; the company to pay \$825 for each car, payments to be made monthly on the estimate made by a person appointed by the company on materials furnished and work done; "payments to be made to the satisfaction of the Bank of Upper Canada, who are to act as receivers." All but 16 cars were delivered, and these 16, the inspector of the company had approved of, and they were sent to the Sus-

pension Bridge to wait for the springs, which the company were to furnish.

On the 24th of September, 1860, the bank and the Grand Trunk Railway Co. entered into an agreement, reciting the contract, and that the bank had made large advances on account of it, and had agreed to advance the necessary sum to complete it and to acquire the title to the cars. The company then assigned all their interest in the agreement and cars to the bank, and the bank leased them back to the company for three years at a rate named, with a proviso that on payment of their debt to the bank the cars should revert to the company. After this, P. received moneys from the bank on account of the contract.

Held, that by the agreement the cars vested in the company before delivery; that the bank were not precluded by their charter from taking security upon them, and that they were entitled therefore as against an executive creditor of P.

(2) *Bank of Toronto vs. Perkins*, 8 S. C. R. 603 (1883).

B., on the 19th January, 1876, transferred to the Bank of T. (appellants), by notarial deed, an hypothec on certain real estate in Montreal, made by one C., to him, as collateral security for a note which was discounted by the appellants and the proceeds placed at B.'s credit on the same day on which the transfer was made. The action was brought by the appellants against the insolvent estate of C. to set aside a prior hypothec given by C., and to establish their priority.

Held (affirming the judgment of the Court of Queen's Bench), that the transfer by B. to the Bank of T. was not given to secure a past debt, but to cover a contemporaneous loan, and was, therefore, null and void, as being in contravention of the Banking Act, 34 Vic., ch. 5, sec. 40.

(3) *Grant vs. La Banque Nationale*, 9 O. R. 411 (1885).

Advances made on a pledge of certain timber limits to the Province of Quebec, which pledge purported on its face to be "for advances made and to be made," was valid as to advances made before the pledge, but that as to the future advances the pledge of the timber limits was invalid as being in contravention of 34 Vic., chap. 5, sec. 40.

(4) *Bathgate vs. Merchants' Bank*, 5 Man. L. R. 210 (1888).

The full and true consideration for which a bill of sale is given must be set out in it with substantial accuracy, otherwise the bill is void. G., being indebted to B., gave his note for the amount, which B. discounted at a chartered bank. As security for the discount, G. executed a chattel mortgage to the bank. At maturity B. took up the note. Afterwards he procured from G. a bill of sale of the goods. The bill recited the mortgage, and an agreement to sell the goods for \$100 over the mortgage. The expressed consideration was the premises and \$100. The \$100 was not paid or intended to be paid.

Held, that the mortgage was void under the Banking Act. (Sec. 45).

(5) *In re McCaffrey & La Banque du Peuple*, R. J. Q. 5 S. C. 135 (1894).

An alleged infringement of The Banking Act (*e. g.*, taking security for future advances), though a matter affecting public policy, will not support a contestation of the bank's claim unless pleaded and legally proved.

(6) *Gillies vs. Commercial Bank*, 10 Man. L. R. 460 (1895).

The plaintiff, a married woman, carried on business separately from her husband, and, being largely indebted to numerous creditors and to the defendant bank, applied to the bank for an advance. This was agreed to, on the plaintiff giving the bank a mortgage on her real-estate and stock and all future stock to be acquired during the currency of the mortgage. She also assigned to the bank all her book debts as further security.

Held, (1) that the securities taken were valid under s. 48 of the Banking Act then in force, R. S. C., c. 120.

(2) That the plaintiff had no equity under the circumstances to compel the bank to perform its covenant to pay her creditors without offering to perform the agreement on her part, and to pay her debt to the bank.

(3) That under the circumstances no trust was created by the said covenant of the bank in favor of the creditors referred to therein, such covenant having been intended to refer only to the proceeds of the plaintiff's sales and to deposits and collections of book-debts while the business was being carried on, and having been given only with a view to enable the plaintiff to keep the business going.

(7) *Bank of Hamilton vs. Donald*, 13 Man. L. R. 378.

Under Section 80 of the Bank Act, security may be taken from the owner of horses for an existing debt by a Bill of Sale of the horses, which expressly states that it is taken only by way of additional security for the debt, and Section 76 of the Act does not prevent the bank from recovering on promissory notes made in its favour by a person who purchased the horses from the transferrer.

(8) *Dominion Bank vs Oliver*, 1889, 17 O. R. 402.

If a bank holding a mortgage as additional security for the payment of certain notes, substitutes for these notes renewals from time to time, without, however, receiving actual payment, the whole series of notes and renewals form links in the same chain of liability which is secured by the mortgage. Although as a matter of bookkeeping, the bank may have treated the first notes, and the subsequent substituted notes, as paid by the application of the proceeds from time to time of the renewals, there is no payment in fact of the notes for which mortgage was given.

No special priority is given by this section to mortgages authorized by it. It allows mortgages to be taken by the bank under certain circumstances, but their validity and priority must be determined by provincial law.

Rights, Powers and Privileges.—Sub-section 2 makes applicable to personal or movable property mortgaged to the bank the rights, powers and privileges which the bank has in regard to real or immovable property, *i. e.*, those given by secs. 81, 82 and 83.

81. Purchasers of Realty.—The bank may purchase any lands or real or immovable property offered for sale,—

(a) Under execution, or in insolvency, or under the order or decree of a court, as belonging to any debtor to the bank; or

(b) By a mortgagee or other encumbrancer having priority over a mortgage or other encumbrance held by the bank; or

(c) By the bank under a power of sale given to it for that purpose;

in cases of which, under similar circumstances, an individual could so purchase, without any restriction as to the value of the property which it may so purchase, and may acquire a title

thereto as any individual purchasing at sheriff's sale, or under a power of sale, in like circumstances, could do, and may take, have, hold and dispose of the same at pleasure. 53 V., c. 31, s. 69.

The powers given by this section also extend to personalty: see sec. 80, and sec. 78.

82. Bank may acquire Absolute Title to Mortgaged Premises.—The bank may acquire and hold an absolute title in or to real or immovable property mortgaged to it as security for a debt due or owing to it, either by obtaining a release of the equity of redemption in the mortgaged property, or by procuring a foreclosure, or by other means whereby, as between individuals, an equity of redemption can, by law, be barred, and may purchase and acquire any prior mortgage or charge on such property.

2. No Act or Law to prevent.—Nothing in any charter, Act or law shall be construed as ever having been intended to prevent or as preventing the bank from acquiring and holding an absolute title to and in any such mortgaged real or immovable property, whatever the value thereof, or from exercising or acting upon any power of sale contained in any mortgage given to or held by the bank, authorizing or enabling it to sell or convey away any property so mortgaged. 53 V., c. 31, s. 71; 63-64 V., c. 26, s. 14.

The right of a bank to sell in pursuance of a power of sale contained in a mortgage is impliedly recognized by sec. 81.

The powers given by this section extend also to personalty—see sec. 80.

83. Property to be sold within a Certain Time.—No bank shall hold any real or immovable property, howsoever acquired, except such as is required for its own use, for any period exceeding seven years from the date of the acquisition thereof, or any extension of such period as in this section provided, and such property shall be absolutely sold or disposed of within such period or extended period, as the case may be, so that the bank shall no longer retain any interest therein unless by way of security.

2. Extension of Time.—The Treasury Board may direct that the time for the sale or disposal of any such real or immovable property shall be extended for a further period or periods, not to exceed five years.

3. Twelve years.—The whole period during which the bank may so hold such property under the foregoing provisions of this section shall not exceed twelve years from the date of the acquisition thereof.

4. Property not sold liable to Forfeiture.—Any real or immovable property, not required by the bank for its own use, held by the bank for a longer period than authorized by the foregoing provisions of this section shall be liable to be forfeited to His Majesty for the use of the Dominion of Canada: Provided that,—

(a) no such forfeiture shall take effect until the expiration of at least six calendar months after notice in writing to the bank by the Minister of the intention of His Majesty to claim the forfeiture; and,

(b) the bank may, notwithstanding such notice, before the forfeiture is effected sell or dispose of the property free from liability to forfeiture.

5. Provisions apply to Realty now held.—The provisions of this section shall apply to any real or immovable property heretofore acquired by the bank and held by it at the time of the coming into force of this Act. 63-64 V., c. 26, s. 14.

The words "howsoever acquired" refer to the acquiring of the absolute title in any of the ways mentioned in sec. 82. The seven years' limitation begins to run from the getting in of the absolute title, not from the taking of the security.

84. Loans on Standing Timber.—The bank may lend money upon the security of standing timber, and the rights or licenses held by persons to cut or remove such timber. 63-64 V., c. 26, s. 16.

Standing timber is real property as part of the land upon which it stands, and a mortgage thereof would apart from this section, be within the prohibition of section 76. The effect of the section is that standing timber and the rights or licenses held by persons to cut or remove such timber may be the subject of mortgage or a pledge to the bank, and such mortgage or pledge is not confined to the case mentioned in sec. 80, that is, it need not be "by way of additional security for debts contracted to the bank in the course of its business." It may be to secure contemporaneous or future advances.

85. As to Advances for building Ships.—Every bank advancing money in aid of the building of any ship or vessel shall have the same right of acquiring and holding security upon such ship or vessel, while building and when completed, either by way of mortgage, *hypothèque*, hypothecation, privilege, or lien thereon, or purchase or transfer thereof, as individuals have in the Province where in the ship or vessel is being built;

2. Rights and Obligations.—The bank may, for the purpose of obtaining and enforcing such security, avail itself of all such rights and means, and shall be subject to all such obligations, limitations and conditions, as are, by the law of such province, conferred or imposed upon individuals making such advances. 53 V., c. 31, s. 72.

This section forms an exception to sec. 76, which prohibits the lending of money upon the security, of any ships or other vessels.

Secs. 80 and 85, being read together, permit a bank to acquire and hold security upon a ship, (1) for the repayment of advances made in aid of the building of the ship, (2) by way of additional security for any debt contracted to the bank in the course of its business.

86. Warehouse Receipts and Bills of Lading.—The bank may acquire and hold any warehouse receipt or bill of lading as collateral security for the payment of any debt incurred in its favour, or as security for any liability incurred by it for any person, in the course of its banking business.

2. Effect of taking.—Any warehouse receipt or bill of lading so acquired shall vest in the bank, from the date of the acquisition thereof,—

(a) all the right and title to such warehouse receipt or bill of lading and to the goods covered thereby of the previous holder or owner thereof; or,

(b) all the right and title to the goods, wares and merchandise mentioned therein of the person from whom the same were received or acquired by the bank, if the warehouse receipt or bill of lading is made directly in favour of the bank, instead of to the previous holder or owner of such goods, wares and merchandise. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15.

This section and sec. 88 must be read subject to the provisions of sec. 90. They are both important exceptions to the provisions of sec. 76, which forbid a bank to lend money or make advances

upon the security of any goods, wares and merchandise. For the history of the legislation, see Falconbridge, p. 164.

The method of acquiring is not prescribed. A warehouse receipt or bill of lading may be transferred either by delivery, after endorsement in blank, or by special endorsement to the bank.

Warehouse receipt as used in this Act is defined by sec. 2 (g).

A statement of the place where the goods are stored is not essential to the bank's security.

A bill of lading is defined by sec. 2 (h).

The debt or liability must be incurred either contemporaneously with the taking of the security or upon a written promise or agreement, etc. See sec. 90.

The words "goods, wares and merchandise" are defined by sec. 2 (f).

The transfer of the receipt, etc., vests in the bank only the particular goods mentioned in such receipt, and not goods substituted for such goods. Cf., however, sub-sec. 2 of sec. 88, as to goods substituted in cases within that sub-section, and see sub-sec. 1 of sec. 89, as to goods manufactured or produced from the goods covered by a receipt, etc.

As to realization of security, see sec. 89, sub-sec. 3.

Sec. 143 renders it a criminal offence to make any false statement in any warehouse receipt, etc., given to a bank under this section.

(1) *Bank of British North America vs. Clarkson*, 19 U. C. C. P. 182 (1869).

M. & Co. being indebted to the plaintiffs on certain overdue notes, it was agreed that plaintiffs should discount a further note for them, with the proceeds of which, it was understood, the overdue paper should be retired; that M. & Co. should hand over to plaintiffs certain warehouse receipts for wool, stored in their warehouse, as collateral security. This note was accordingly, on 23rd January, 1868, discounted by plaintiffs, and the old notes duly retired, an agreement being signed by M. & Co. at the time of the discount, reciting that they had endorsed over the receipts as collateral security for the note, etc., etc. The receipts, nearly all in the same form, were as follows:

"Warehouse Receipt.

"Received in store in our warehouse, at from sundry parties, 17,900 pounds batting, to be delivered pursuant to the order of the Bank of British North America, to be endorsed hereon. The said batting is separate from, etc., etc." Neither M. & Co., nor the bank, endorsed the receipts.

Held, that they were not warehouse receipts under the statutes referred to, and that the bank could not, therefore, claim the property covered by them.

Per Hagerty, C. J., that the transaction of the 23rd January, was not in substance, though in form, a present advance to M. & Co., but merely a mode adopted of paying off an already existing debt. (2) *Williamson vs. Rhind*, 22 L. C. J. 166 (1877).

A warehouse receipt given by a warehouseman when the goods in question are not in his possession is null and void.

(3) *Milloy vs. Kerr*, 8 S. C. R. 474 (1880).

A warehouse receipt given by a warehouseman for goods which were not in his actual possession was not a valid warehouse receipt.

Held, that M. never had any actual possession, control over, or property in the goods in question, so as to make the receipt given by

M., under the circumstances in this case, a valid warehouse receipt within the meaning of the clauses in that behalf in the Banking Act.

(4) *Merchants Bank vs. Smith*, 8 S. C. R. 512 (1884).

Held, that it is not necessary to the validity of the claim of a bank under a warehouse receipt given by an owner who is a warehouseman and wharfinger, and has the goods in his possession, that the receipt should reach the hands of the bank by indorsement.

(5) *Bank of Hamilton vs. Noye*, 9 O. R. 631 (1885).

In this case the question of the validity of warehouse receipts was decided. It was held that a party having undertaken to keep certain "grain separate and distinguishable from other grain," and having failed to do so, it became his duty to enable the plaintiff to recover what the receipts called for or its equivalent.

(6) *Stevenson vs. Bank of Commerce*, 23 S. C. R. 531 (1892).

On an appeal to the Supreme Court, it was held that the finding of the courts below [see R. J. Q., 1 Q. B. 171 (1892)] of the fact of the bank's knowledge of their debtor's insolvency was sustained by the evidence in the case, and there had therefore been a fraudulent preference made to the bank by the insolvent in transferring over to it all his customers' paper not yet due.

(7) *Fall vs. Shortley*, R. J. Q., 1 S. C. 389 (1892).

The transfer of a warehouse receipt to secure a past due indebtedness is not in itself an unlawful act, but such transfer gives the transferee none of the exceptional rights which would result from a transfer under C. S. O., ch. 54, s. 9.

It gives him no right upon the goods represented by the receipt, such goods, notwithstanding the transfer, remaining the property of the transferor free of any lien whatever in favor of the transferee.

(8) *Tennant vs. Union Bank*, 19 O. A. R. 1 (1893).

The plaintiff was the assignee for the benefit of the creditors of a firm of saw millers who had obtained large advances from the defendants on the security of a third person's promissory note endorsed by the firm. To this third person, in pursuance of a previous written agreement to that effect, whereby the firm pledged to him a quantity of logs on timber limits and the lumber to be manufactured therefrom, the firm gave warehouse receipts on logs described as being in certain lakes in transit to the mills, and also subsequently in conformity with an agreement with the bank when the advances were made, on lumber in the mill yards manufactured from the logs pledged, and the warehouse receipts were by him endorsed over to the bank.

Held, that the warehouse receipts were bad as to the logs, the lakes not being "places kept by the signers of the receipts."

Held, further, Burton, J. A., dissenting, that the warehouse receipts were good as to the lumber, and had been validly acquired by the bank by endorsement from the holder under sub-section 2 of section 53 and section 54 of R. S. C., chap. 120.

(9) *Young vs. Demers*, R. J. Q., 4 Q. B. 364 (1895).

A wood, salt or coal merchant, who occupies a wharf for the purposes of his trade, where he receives and gives delivery of his merchandise, has not the quality to give a receipt of this merchandise which gives to the prejudice of third parties special rights which warehouse keepers can create through their quality of warehouse keepers for the merchandise of others.

(10) *Armstrong vs. Buchanan*, 35 N. S. Repts. 559.

B. being indebted to the bank, gave them a document purporting to be a warehouse receipt, and also a general transfer by bill of sale. The bank took possession of a portion of the goods covered by the documents, and removed them, and was proceeding with the removal of the goods when the removal was forbidden by one of B.'s clerks. Two actions of replevin brought by the bank to recover possession of the remainder of the goods were compromised by B., who agreed that the bank should take the goods and sell them, and credit him with the amount received.

Held, that notwithstanding any irregularities under the Bank Act, the title of the bank was complete under the compromise made between the bank and B., and that the plaintiff who purchased a portion of the goods from the bank was entitled to recover against the defendant's sheriff, who levied on the goods under the execution against B. *Held* also, assuming it to be correct that the security on the goods held by the bank was void under the provisions of the Act, not being for a present debt, but for a past due debt, and that the bank were not entitled to hold such security against the creditors of B., that the bank were not obliged to rest their title on the documents, and that its defects, if any, would not effect the subsequent transactions by which the bank became the actual purchasers of the goods and dealt with them as their property.

(11) *Imperial Bank vs. Hull*, 4 Terr. L. R., 498 (1901).

Held (1) Where a consignor of perishable goods draws through a Bank upon the consignee at sight for the amount of the contract price and attaches the bill of lading to the draft, the consignee is entitled to examine the goods before accepting them or paying the draft;

(2) If it is necessary to obtain the bill of lading from the Bank and surrender it to the carriers in order to make the examination, the fact that the consignee does so, and thereby makes it impossible to return the bill of lading to the Bank, does not render him liable to pay the draft;

(3) Under sec. 73 of the Bank Act, the bank has no other or higher rights than the consignors.

(4) The fact that the bank endorses the bill of lading to the consignee in order to enable him to examine the goods does not transfer the right of property in them to the consignee, and if the latter deals with the goods as his own by reshipping and selling them he becomes liable to the bank in an action for conversion, for the goods or their value;

Where, therefore, the Bank, in such circumstances, sued for the amount of the draft, and the defendant pleaded that a large portion of the goods were worthless, and paid into Court, the invoice price of the portion sold by him, and it appeared in evidence that the portion unsold were absolutely worthless, the Court directed an amendment of the statement of claim so as to make it an action of detinue, and gave judgment for the amount paid into Court, but without costs.

Imperial Bank vs. Hull, 5, Terr. L. R., 313 (1902).

The judgment of Rouleau, J. (4 Terr. L. T. 498) varied by striking out the order to amend the plaintiffs' statement of claim as unnecessary, and directing that judgment be entered for the defendant, and that the amount paid into Court by the defendant be paid out to the plaintiffs; the plaintiffs to have the costs of the action up to the time of the second payment into Court; the defendants to have the general costs of the action after that date, and the plaintiffs to have the costs of the issues upon which they succeeded.

Per McGuire, C. J., (1) Against the contention of the plaintiffs that the measure of damages was the face value of the Bill of Exchange inasmuch as the defendants' conduct prevented them from returning the bill of lading to the consignors and demanding back the amount advanced upon the security, that the measure of damages was the value—but only the actual value having regard to their condition and quality—of the goods to the plaintiffs, not necessarily what the defendant could or did sell them for. The plaintiffs' contention was unsound, inasmuch as upon the dishonour of the draft they were entitled to look to the drawers at once and were not obliged to give credit for the amount of the collateral security until they had actually realized thereon, *Molsons Bank vs. Cooper*. The bill of lading was of no value except to give the plaintiffs the property, and the right to the possession of the goods. The damages in an action by either the bank or the consignors against either the defendant or stranger would have been the same, viz., the value of the goods, because now by virtue of section 51 of the Sales of Goods Ordinance, any breach of warranty—here the defective quality of the goods—can be set up in diminution of extinction of the price sued for.

(2) The difference in language between the Imperial Bills of Lading Act (18-19 Vic., c. 111, s. 1.), and the Bank Act (defining the position of an endorsee of a bill of lading), considered.

Per Wetmore, J. (Richardson and Scott, J. J., concurring.)

(1) Had the consignors as in *Shepherd v. Harrison* sent the bill of exchange with the bill of lading attached, directly to the defendant, they might have sued for the price on the basis of the defendant's acceptance of the goods or for damages on the basis of a conversion. In the former case the defendant could have set up the defective quality of the goods in diminution of the price. In the latter case the measure of damages would have been the value of the goods to the consignors, which would probably be the same as in the former case. The bank as the holders of the bill of lading were in no better position than the consignors.

(2) *Semble*, the right and title vested in the plaintiffs under s. 73 of the Bank Act by virtue of the bill of lading was only the right and title to the goods, and not contractual rights which the consignor had against the purchaser.

Circumstances raising an implied warranty that goods are merchantable considered.

87. When previous Holder is an Agent.—If the previous holder of such warehouse receipt or bill of lading is any person,—

(a) entrusted with the possession of the goods, wares and merchandise mentioned therein, by or by the authority of the owner thereof; or,

(b) to whom such goods, wares and merchandise are, by or by the authority of the owner thereof, consigned; or,

(c) who, by or by the authority of the owner of such goods, wares and merchandise, is possessed of any bill of lading, receipt, order or other document covering the same, such as is used in the course of business as proof of the possession or control of goods, wares and merchandise, or as authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of such a document to transfer or receive the goods, wares and merchandise thereby represented;

the bank shall be, upon the acquisition of such warehouse receipt or bill of lading, vested with all the right and title of the owner of such goods, wares and merchandise, subject to the right of the owner to have the same transferred to him if the debt or liability,

as security for which such warehouse receipt or bill of lading is held by the bank, is paid.

2. Presumption of Possession.—Any person shall be deemed to be the possessor of such goods, wares and merchandise, bill of lading, receipt, order or other document as aforesaid,—

(a) who is in actual possession thereof; or,

(b) for whom, or subject to whose control, the same are held by any person. 53 V., c. 31, s. 73; 63-64 V., c. 26, s. 15.

(1) *Barry v. Bank of Ottawa*, 1908, 17 O. L. R. 83.

The agent within the meaning of sec. 87 can give security under sec. 86, but cannot do so under sec. 88.

88. Loans to Wholesale Shippers or Dealers.—The bank may lend money to any wholesale purchase or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live stock or dead stock and the products thereof, upon the security of such products, or of such live stock or dead stock and the products thereof.

2. Removal of Goods.—The bank may allow the goods, wares and merchandise covered by such security to be removed and other goods, wares and merchandise, such as mentioned in the last preceding subsection, to be substituted therefor, if the goods, wares and merchandise so substituted are of substantially the same character, and of substantially the same value as, or of less value than, those for which they have been so substituted: and the goods wares and merchandise so substituted shall be covered by such security as if originally covered thereby.

3. Loans to Wholesale Manufacturers.—The bank may lend money to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by him, or procured for such manufacture.

4. Owner may give the Security.—Any such security, as mentioned in the foregoing provisions of this section, may be given by the owner of said goods, wares and merchandise, stock or products.

6. Form of Security.—The security may be taken in the form set forth in schedule C. to this Act, or to the like effect.

6. Same Rights as upon Warehouse Receipt.—The bank shall, by virtue of such security, acquire the same rights and powers in respect to the goods, wares and merchandise, stock or products covered thereby, as if it had acquired the same by virtue of a warehouse receipt. 53 V., c. 31, s. 74; 63-64 V., c. 26, s. 17.

The section must be read subject to sec. 90.

It is to be noted that the provision of sub-sec. 2 applies only to security taken under sub-sec. 1, and not to security taken under sub-sec. 3. There is no similar provision applicable to goods covered by a warehouse receipt.

The bank's right to hold substituted goods under this section must be distinguished from the right under sec. 89 to retain its security on goods manufactured from the goods originally assigned to it. The latter right extends both to goods covered by a warehouse receipt and to goods assigned under sec. 88.

The word "manufacturer" as defined by sec. 2 (i) "includes manufacturer of logs, timber, or lumber, maltsters, distillers, brewers, refiners and producers of petroleum, tanners, curers, packers, canners of meat, pork, fish, fruit or vegetables, and any person who produces by hand, art, process or mechanical means any goods, wares or merchandise."

The goods of a manufacturer, upon the security of which the bank may, under this section, make advances, must be goods actually manufactured by him or procured for such manufacture. They must not be goods procured by him to be sold in substantially the same condition.

(1) *Merchants' Bank of Halifax vs. Houston*, 7 B. C. L. R. 465 (1899).

Where the bookkeeper of a mill owner, to enable the owner to carry out a contract, bought logs with advance made for this purpose by a bank, which logs were cut up at such owner's mill, and the bookkeeper endorsed the owner's notes to the bank.

Held, that the logs and lumber manufactured therefrom did not come under a chattel mortgage covering all lumber which might at any time be brought on the premises, and that the bank was not prevented by the Bank Act from taking the usual security in respect to the logs.

On appeal to the Supreme Court of Canada, that Court on the 21st May, 1901, confirmed this judgment.

(2) *Molsons Bank vs. Beaudry*. R. J. Q., 11 K. B., 212 (1901).

B., a wholesale and retail lumber merchant, as security for certain promissory notes, hypothecated to the bank certain lumber, and subsequently became insolvent. The bank were collocated by preference on the proceeds of the sale of this lumber by the curator. The creditors contested the collocation on the ground that the insolvent was not carrying on any of the business operations mentioned in section 88 of the Bank Act, and that the hypothecation did not fall under the meaning and provisions of that section. The Superior Court for the District of Montreal on the 25th January, 1901, held that lumber is not the product of the forest but of the saw mill, the product of the forest being the logs in their original condition, and the Court decided that the bank was not justified under the terms of the Bank Act to make the advance, and, consequently, the alleged hypothecation was a nullity.

This judgment, on appeal to the Court of King's Bench, Appeal Side, was confirmed unanimously, but Mr. Justice Hall differed as to one of the reasons given, namely, that the lumber in question was not the product of the forest. His Lordship was of opinion that the lumber in question came within the terms of section 88 of the Bank Act and was the product of the forest within the meaning of that section.

(1) A bank cannot under Section 88 (3) of the Bank Act obtain a lien upon the products of a forest for a pre-existing debt.

(2) Manufactured wood, that is to say, wood transformed into joists, planks, plinth and mouldings does not constitute a forest product within the terms of Section 88-(3).

(3) *Houston vs. Merchants Bank of Halifax*, 31 S. C. R., 361, (1901).

H. held a chattel mortgage on a sawmill belonging to G., with the machinery and lumber therein, and all lumber that might at any time thereafter be brought on the premises. The mortgage not being registered gave H. no priority over subsequent incumbrances. Two months later G. gave H. a second mortgage on said property to secure a note for \$794. Shortly after this a contractor applied to G. for a large quantity of lumber for building purposes. G., being unable to purchase the logs, asked the Merchants Bank for an advance. The bank, knowing G. to be financially embarrassed, refused the advances to him, but agreed to make them if some reliable person would purchase the logs, which

was done by G.'s bookkeeper, and in consideration of an advance of \$3,500, G. assigned the contractor's order to the bookkeeper and agreed to cut the logs at a price fixed, and deliver them to the bookkeeper at the mill site. The latter then assigned to the bank all moneys to accrue in respect to the contract, which assignment was agreed to by the contractor, and a day or two after also assigned to the bank three booms of logs by numbers, in addition to one assigned previously. This purported to be done under sec. 88 (3) of the Bank Act. Two or three days later G. made an assignment for benefit of his creditors, previous to which, however, the logs had arrived at the mill and were mixed with other logs of G. The greater part had been converted into lumber when H. seized them under his chattel mortgage.

Held, affirming the judgment of the Supreme Court of British Columbia, (7 B. C. Rep. 465), that no property in the logs assigned to the bank had passed to G., and H. having no higher right than his mortgagor, could not claim them under his mortgage.

Shortly before G.'s assignment for the benefit of his creditors his bookkeeper transferred to the bank a chattel mortgage given him by G. to secure payment of \$800. The judgment appealed from ordered the assignee in bankruptcy to pay the bank the balance due on said mortgage.

Held, reversing said judgment, that the assignee had been guilty of no acts of conversion and was not liable to repay this money. The mortgage was not given to secure advances and did not give the bank a first lien on the property. The bank was in the same position as if it had received the mortgage directly from G. when he was notoriously insolvent.

(4) *Hirschfeldt vs. The Union Bank*, R. J. Q., 7 S. C. 300 (1895).

Held, the pledgee of grain pledged as collateral security for advances is not responsible for commissions on sales made by an agent employed by the pledger and acting solely under his instructions as owner although such sales were made only on such terms as were satisfactory to the pledgee.

(5) *La Banque d'Hochelaga vs. Merchants' Bank*, 10 Man. L. R. 361 (1895).

One A., a wholesale purchaser and shipper of dead stock and the products thereof, obtained several advances of money from the defendants on the security of assignments of certain hog products in the form in Schedule C. to the Bank Act; and agreed with the manager of the Bank to ticket the goods so as to identify them, and not to sell the goods. He then set apart certain of the goods as belonging to the defendants, and placed tickets over them to indicate this, but afterwards he sold all these goods in the ordinary course of business and substituted other goods of a like character in their place, placing the same tickets upon them. Subsequently, the plaintiffs, as security for a then pre-existing debt due them from A., obtained an assignment of the same kind as the defendants had taken, covering *inter alia* 10,000 lbs. of bacon, but no appropriation of any particular bacon as hypothecated to the plaintiffs was made until about seven weeks later, when, at the instance of an officer of the plaintiffs, A. set apart 10,000 lbs. of bacon out of the pile which had been appropriated to the defendants in the manner above described and this quantity was ticketed with the name of the plaintiff bank, the defendants' tickets being removed. Shortly afterwards A. absconded, and the defendants took possession of this 10,000 lbs. of bacon under their securities.

Held, that they were entitled to hold it against the plaintiffs.

Held, also, that, notwithstanding the language of s. 90 of the Bank Act, a bank may take securities of the kind provided for by s. 88, even for pre-existing debts, as the general provisions of s. 80 should not be held to be restricted by the language of s. 90 so as to prevent it.

(6) *Re Victor Varnish Co., Clare's Claim*, 1908, 16 O. L. R. 338.

Security under sec. 88 is not assignable by the bank so as to transfer the special lien or security to a third party.

The security for loans authorized by this section may be taken in any form allowed by the law of the place where the transaction occurs and where the goods or products are, but, if the security is taken in the form of Schedule C., the local law must be observed.

Sub-sec. 5, however, permits the security to be taken in a special form and sub-sec. 6 declares the rights acquired by the bank under such form. If this form is used it is valid notwithstanding that it does not comply with provincial law.

SCHEDULE C.

In consideration of an advance of _____ dollars, made by the _____ Bank to A. B., for which the said bank holds the following bills or notes (*describe the bills or notes, if any*), [or in consideration of the discounting of the following bills or notes by the _____ Bank for A. B.: (*describe the bills or notes*),] the goods wares and merchandise mentioned below are hereby assigned to the said bank as security for the payment, on or before the _____ day of _____ of the said advance, together with interest thereon at the rate of _____ per cent. per annum from the _____ day of _____ (or, of the said bills and notes, or renewals thereof, or substitutions therefor, and interest thereon, *or as the case may be*).

This security is given under the provisions of section eighty-eight of *The Bank Act*, and is subject to the provisions of the said Act.

The said goods, wares and merchandise are now owned by _____ are now in the possession of _____, and are free from mortgage, lien or charge thereon (*or as the case may be*), and are in (*place or places where goods are*), and are the following: (*description of goods assigned*).

Dated, etc.

N.B.—*The bills or notes and the goods, etc., may be set out in schedules annexed*). 63-64 V., c. 26, s. 46, and Sch. C.

The name of the owner of the goods and also the name of the person in whose possession they are and any mortgage lien or charge on such goods, should be mentioned.

The form also provides for the mentioning of the "place or places where the goods are" and the "description of the goods assigned." The latter is an important essential of the form and usually involves the former. In the absence of decisions under the Bank Act it would be well to comply with the rule laid down in the Ontario Bills of Sales Act, namely, that all instruments under the Act shall contain such sufficient and full description thereof that the same may be thereby readily and easily known and distinguished. Cf. *Hatfield v. Imperial Bank*, 1907, 6 Terr. L. R., 296, and cases collected in Falconbridge, pp. 188, *et seq.*

89. As to Goods manufactured from Articles pledged.—

If goods, wares and merchandise are manufactured or produced

from the goods, wares and merchandise, or any of them, included in or covered by any warehouse receipt, or included in or covered by any security given under the last preceding section, while so covered, the bank holding such warehouse receipt or security shall hold or continue to hold such goods, wares and merchandise, during the process and after the completion of such manufacture or production, with the same right and title, and for the same purposes and upon the same conditions, as it held or could have held the original goods, wares and merchandise.

2. Prior Claim of Bank over Unpaid Vendor.—All advances made on the security of any bill of lading or warehouse receipt, or of any security given under the last preceding section, shall give to the bank making the advances a claim for the repayment of the advances on the goods, wares and merchandise therein mentioned, or into which they have been converted, prior to and by preference over the claim of any unpaid vendor: Provided that such preference shall not be given over the claim of any unpaid vendor who had a lien upon the goods, wares and merchandise at the time of the acquisition by the bank of such warehouse receipt, bill of lading, or security, unless the same was acquired without knowledge on the part of the bank of such lien.

3. Sale of Goods on Non-payment of Debt.—In event of the non-payment at maturity of any debt or liability secured by a warehouse receipt or bill of lading, or secured by any security given under the last preceding section, the bank may sell the goods, wares and merchandise mentioned therein, or so much thereof as will suffice to pay such debt or liability with interest and expenses, returning the surplus, if any, to the person from whom the warehouse receipt, bill of lading, or security, or the goods, wares, merchandise mentioned therein, as the case may be, were acquired: Provided that such power of sale shall be exercised subject to the following provisions, namely:—

(a) **Notice.**—No sale, without the consent in writing of the owner of any timber, boards, deals, staves, sawlogs or other lumber, shall be made under this Act until notice of the time and place of such sale has been given by a registered letter, mailed in the post-office, post paid, to the last known address of the pledgor thereof, at least thirty days prior to the sale thereof;

(b) **Notice.**—No goods, wares and merchandise, other than timber, boards, deals, staves, sawlogs or other lumber, shall be sold by the bank under this Act without the consent of the owner, until notice of the time and place of sale has been given by a registered letter, mailed in the post office, post paid, to the last known address of the pledger thereof, at least ten days prior to the sale thereof;

(c) **Sale by Auction.**—Every sale, under such power of sale, without the consent of the owner, shall be made by public auction, after notice thereof by advertisement in at least two newspapers published in or nearest to the place where the sale is to be made, stating the time and place thereof; and, if the sale is in the province of Quebec, then at least one of such newspapers shall be a newspaper published in the English language, and one other such newspaper shall be a newspaper published in the French language. 53 V., c. 31, ss. 76, 77 and 78; 63-64 V., c. 26, s. 19.

(1) *Re Goodfallow, Traders Bank v. Goodfallow*, 1890, 19 O. R. 299.

A miller gave a warehouse receipt to a bank on some wheat "and its product" stored in his mill for advances made to him, and

died insolvent about two months after. During this period wheat was constantly going out of and fresh wheat coming into the mill. Just before his death the bank took possession, and found a large shortage in the wheat which had commenced shortly after the receipt had been given, and had continued to a greater or less degree all the time.

In the administration of his estate it appeared that, during the period of shortage, some of the wheat had been converted into flour, which had been sold, and the proceeds, which were less than the value of the shortage, paid to the administrator:

Held, that the bank was entitled to the purchase money of the flour.

All the wheat made into flour after the shortage began and sold to customers was wheat belonging to the bank. As long as the "product" of this wheat can be traced, whether it be in flour or in money, it is recoverable by the bank as against the deceased and his administrators.

(2) *Union Bank v. Spinney*, 1906, 38 S. C. R. 187, reversing 1 East L. R. 277.

In this case, corn which was pledged to a bank was ground into meal and the product was sold, and the proceeds were sought to be fraudulently diverted to one of the pledgor's creditors. It was held, however, that the purchaser knew or ought to have known that the meal was the property of the bank, and that he was liable to the bank for the purchase money in his hands.

(3) *Toronto General Trusts Corporation v. Central Ontario R. W. Co.*, 10 O. L. R. 347, C. A.

As collateral security to a promissory note, the makers deposited with the banks 300 railway bonds, and, by a memorandum of hypothecation authorized the bank, upon default, "from time to time to sell the said securities . . . by giving fifteen days' notice in one daily paper published in the city of Ottawa . . . with power to the bank to buy in and resell without being liable for any loss occasioned thereby":—*Held* (Osler, J. A., dissenting), that the power was to sell by auction, and that the bank had no power to sell by private contract. *Semble*, that, even if there was power to sell by private contract, the sale made to the respondents could not, upon the evidence as to the methods adopted, be supported, they having notice that the bank held the bonds as pledgees.

90. Conditions under which the Bank may take Security.—

The bank shall not acquire or hold any warehouse receipt or bill of lading, or any such security as aforesaid, to secure the payment of any bill, note, debt, or liability, unless such bill, note, debt or liability is negotiated or contracted,—

(a) At the time of the acquisition thereof by the bank, or

(b) Upon the written promise or agreement that such warehouse receipt or bill of lading or security would be given to the bank;

Provided that such bill, note, debt, or liability may be renewed, or the time for the payment thereof extended, without affecting any such security.

2. Exchanging of Warehouse Receipt for Bill of Lading and vice versa.—The bank may,—

(a) on shipment of any goods, wares and merchandise for which it holds a warehouse receipt, or any such security as aforesaid, surrender such receipt or security and receive a bill of lading in exchange therefor; or,

(b) on the receipt of any goods, wares and merchandise for which it holds a bill of lading, or any such security as aforesaid, surrender such bill of lading or security, store the goods, wares and merchandise, and take a warehouse receipt therefor, or ship the goods, wares and merchandise, or part of them, and take another bill of lading therefor. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 18.

Mortgages whether of real or personal property may be taken by a bank only by way of additional security (see sec. 68). Security under secs. 86 and 88 cannot be taken for a past advance, except upon a written promise or agreement contemporaneous with the advance.

As to penalties, see secs. 143 and 144.

If the bill, note, debt or liability is not negotiated or contracted at the time of the acquisition of the security by the bank, then the negotiation or contracting must be upon the written promise or agreement that such security shall be given. The writing must be given to the bank either at the time of the negotiation or contracting of the debt or anterior thereto, for a bill, etc., could not be said to be negotiated or contracted upon a written promise which is not then in existence.

(1) *Suter vs. Merchants' Bank*, 24 Grant's Ch. R. 365 (1876).

The judgment in this case turned upon advances made to a manufacturer in goods manufactured remaining unsold without specifying any quantity.

(2) *Robertson vs. Lajoie*, 22 L. C. J. 169 (1878).

A document in the form following was a warehouse receipt, and not a mere delivery order: "Received from on storage, in....., the following merchandise, viz.. (300) three hundred tons No. 1 Clyde pig iron, storage free till opening of navigation."

Such warehouse receipt is transferable by indorsement as collateral security for a debt contracted at the time, in good faith, the pledgee having no notice that the pledgor is not authorized to pledge, the proof of such knowledge being on the party signing the receipt.

An obligation contracted at the time may be made to cover future advances, but not past indebtedness.

See *Watson vs. Jamieson*, 33 L. C. J. 71 (1889).

(3) *Perkins vs. Ross*, 6 Q. L. R. 65 (1880).

A quantity of timber was pledged for the payment of a draft, and if the draft was not paid, the holder was to sell the wood and place the proceeds to the owner's credit. The draft was not paid, the owner of the wood became insolvent, and the pledgee sold the wood, of which he never had had actual delivery. Held, that the pledgee could not place the balance of the price of sale after paying the draft to the credit of a former indebtedness of the owner.

(4) *Ross vs. Molsons' Bank*, 2 Dorion's Q. B. R. 82 (1881).

Banks cannot acquire a lien on logs under the Banking Act, 34 Vict., chap. 5, if the pledge of these logs was made for a previous indebtedness, or if they were not held by virtue of a transfer of a receipt by a cove-keeper or by the keeper of any wharf or harbour, or other place, or of a specification of timber deposited in a cove, wharf or harbour, warehouse, mill or other place in Canada within the meaning of the said Act.

To acquire a lien under Articles 1745, 1966 and 1967 of the Civil Code of Lower Canada, there must be an actual delivery or possession of the property pledged or of some document in use in the ordinary course of business entitling the bearer thereof to claim possession of such property.

(5) *Bank of Hamilton vs. Shepherd et al., and Bailey et al. vs. Bank of Hamilton*, 21 O. A. R. 156 (1894).

The renewal of a note is not a negotiation of it within the meaning of section 90 of the Bank Act, so as to support a security taken at the time of the renewal in substitution for a previously existing security.

(6) *Bank of Hamilton vs. Halsted*, 28 S. C. R. 235 (1897).

A bill or note taken by a bank on acquiring a security in form C. to the Bank Act, sections 88 and 90 is not "negotiated," at the time of the acquisition thereof within the meaning of the latter section, when the person giving the security, and to whose account the proceeds of the bill or note are credited, is not at liberty to draw against them except on fulfilling certain other conditions.

Held by the Supreme Court of Canada, an assignment made in the form C. to the Bank Act, as security for a bill or note given in renewal of a past due bill or note, is not valid as a security under sec. 88.

The judgment of the Court of Appeal for Ontario, which affirmed the judgment of Meredith, C. J. affirmed.

Cf. Dominion Bank v. Oliver, 1889, 17 O. R. 402; *Ontario Bank v. O'Reilly*, 1906, 12 O. L. R., 420; *Toronto Cream v. Crown Bank*, 1908, 16 O. L. 400.

(7) *Conn vs. Smith et al.*, 28 O. R. 629 (1898).

The insolvent had been in the habit of buying hops from time to time, and giving the bank his own warehouse receipts or direct pledges for the purpose of raising money to pay for them. Then, at the request of the bank, he constituted his bookkeeper, his warehouseman, and the latter issued warehouse receipts to the bank in substitution for the securities or receipts theretofore held, there being no further advance made when the new securities were given.

Held, that this exchange of securities should be treated as authorized under sub-section 2 of section 90 of the Bank Act.

The plaintiff asked for a declaration that advances made by the bank upon a mortgage by the insolvent to a third person, and by him assigned to the bank, were contrary to the Bank Act, and that the property was free from the mortgage:

Held, that no such declaration could be made in the absence of the mortgagee, who was liable to the bank as endorser of a promissory note of the insolvent, collateral to the mortgage.

91. Interest at 7 Per Cent. may be charged.—The bank may stipulate for, take, reserve or exact any rate of interest or discount, not exceeding seven per centum per annum, and may receive and take in advance, any such rate, but no higher rate of interest shall be recoverable by the bank. 53 V., c. 31, s. 80.

92. Any Rate may be Allowed.—The bank may allow any rate of interest whatever upon money deposited with it. 53 V., c. 31, s. 80.

(1) *La Banque de St. Hyacinthe vs. Sarrazin*, R. J. Q., 2 S. C. 96 (1892).

Banks can charge, on notes which are presented to them for discount, only interest of seven per cent. per annum.

The prohibition in this matter, being one affecting public order, the person who has paid to a bank interest exceeding the rate fixed by law is entitled to receive from the bank the amount of the excess.

(2) *Bank of British North America v. Bossuyt*, 15 Man. R. 266.

Defendant borrowed large sums of money from the plaintiff bank by way of overdraft and on promissory notes. Having agreed

to pay interest, first at 24 per cent., and afterwards at 18 per cent. per annum, defendant from time to time gave the bank cheques on his current account to pay the interest at those rates respectively up to the 31st January, 1902. When such cheques were given the account had already been overdrawn, but it was afterwards changed into a credit balance in defendant's favor by deposits or by collections made by the bank for defendant's account. *Held*, that such cheques should be deemed to have been payment of the interest, and that defendant could not recover back such interest or any part of it, although it was in excess of the seven per cent. rate which the Bank Act permits a bank to charge. *Held*, also, that under section 91 of the Bank Act, the bank was not entitled to sue for and recover interest accruing after 31st January, 1902, at seven per cent. per annum, but could only recover interest at the legal rate of five per cent. per annum from that date on the principal then due.

(3) The contract is not invalid except in so far as it stipulates for more than 7 per cent.

Bank of Montreal v. Hartman 1905, 12 B. C. R. 375.

If, however, the debtor voluntarily pays the excess of interest over seven per cent. as, e.g., by giving his cheque to the bank for such excess as shewn by the bank's monthly statement, he cannot recover back the excess, and is not entitled in an action by the bank to have the amount of the excess so paid applied on account of the principal or of the interest calculated at seven per cent. only.

Canadian Bank of Commerce v. McDonald, *supra*; *Bank of B. N. A. v. Bossuyt*, *supra*; *Quinlan v. Gordon*, *supra*; *Hutton v. Federal Bank*, 1883, 9 P. R., at p. 581.

See also *Ritchie v. Canadian Bank of Commerce*, 1905, 2 West, L. R. 499, 501; *Canadian Bank of Commerce v. McDonald*, 1906, 3 West, L. R. 90, 101; *Williams v. Canadian Bank of Commerce*, 1907, 13 B. C. R. 70; *Falconbridge*, p. 204.

A bank may also receive and retain, in addition to the discount, the collection or agency charges authorized by secs. 93 and 94.

93. Percentage chargeable for Collection.—When any note, bill or other negotiable security or paper, payable at any of the bank's places or seats of business, branches, agencies or offices of discount and deposit in Canada, is discounted at any other of the bank's places or seats of business, branches, agencies or offices of discount and deposit, the bank may, in order to defray the expenses attending the collection thereof, receive or retain, in addition to the discount thereon, a percentage calculated upon the amount of such note, bill or other negotiable security or paper not exceeding, if the note, bill or other negotiable security or paper is to run;

(a) For less than thirty days, one-eighth of one per centum;

(b) For thirty days or over, but less than sixty days, one-fourth of one per centum;

(c) For sixty days or over, but less than ninety days, three-eighths of one per centum; and

(d) For ninety days or over, one-half of one per centum. 53 V., c. 31, s. 82.

Cf. sec. 91 as to rate of interest allowed by law, and sec. 94 as to collection fees on negotiable paper payable at places other than the place of discount or a branch or agency of the same bank.

A bank is not entitled to charges any discount or commission for the cashing of any official cheque of the Government of Canada, or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank (sec. 98.)

94. Agency Charges.—The bank may, in discounting any note, bill or other negotiable security or paper, *bona fide* payable at any place in Canada other than that at which it is discounted, and other than one of its own places or seats of business, branches, agencies or offices of discount and deposit in Canada, receive and retain, in addition to the discount thereon, a sum not exceeding one-half of one per centum on the amount thereof, to defray the expenses of agency and charges in collecting the same. 53 V., c. 31, s. 83.

95. Deposits may be Received from Persons unable to Contract.—The bank may, subject to the provisions of this section, without the authority, aid, assistance or intervention of any other person or official being required,—

(a) receive deposits from any person whomsoever, whatever his age, status or condition in life, and whether such person is qualified by law to enter into ordinary contracts or not; and,

(b) from time to time repay any or all of the principal thereof, and pay the whole or any part of the interest thereon to such person, unless before such repayment the money so deposited in the bank is lawfully claimed as the property of some other person.

2. In the case of any such lawful claim, the money so deposited may be paid to the depositor with the consent of the claimant, or to the claimant with the consent of the depositor.

3. If the person making any such deposit could not, under the law of the province where the deposit is made, deposit and withdraw money in and from a bank without this section, the total amount to be received from such person on deposit shall not, at any time, exceed the sum of five hundred dollars. 53 V., c. 31, s. 84.

The receiving of deposits and the honouring of cheques is the primary function of a bank; see notes to sec. 76. See also Falconbridge, chap. 18 on "Deposits and the Current Account."

Sec. 95 enables a bank in receiving deposits, to some extent, to deal with persons otherwise incompetent by provincial law to contract. Up to an aggregate amount of \$500 the bank may receive deposits from any person without regard to whether by provincial law such person could deposit money in, and withdraw money from, a bank.

By section 92 the bank may allow any rate of interest whatever upon money deposited with it. Interest-bearing deposits must be distinguished from other deposits in the annual statement (sec. 54.)

The bank must pay its customer's cheque on presentation if it has funds sufficient to meet the cheque.

(1) *Brown vs. Quebec Bank*, 2 L. C. J. 253 (1866).

Banking institutions are not liable for any deficit in packages of silver paid out by them, unless the silver be counted and the deficit made known before the packages are taken from the bank.

(2) *Saderquist vs. Ontario Bank*, 15 O. A. R. 609 (1889).

The plaintiff, a Norwegian by birth, and almost totally ignorant of the English language, in September, 1884, deposited with the defendants at one of their branch offices a sum of money, and received from the bank the usual deposit receipt, at the time signing his name on the stub or counterfoil of the receipt for the purpose of enabling the bank to identify him at any time the money might be demanded. For the purpose of safekeeping, plaintiff, being about to proceed to work elsewhere, left the receipt with one S. S. About seven months afterwards plaintiff returned, when he was informed by S. S. that he had withdrawn the money from the bank, but pro-

mitted to return it. The plaintiff being ignorant of the manner in which the money had been paid out and of his rights as against the defendants, took no steps whatever against them, and S. S. absconded from the country in August, 1885, heavily indebted. In the month of December following, the plaintiff having been informed as to his rights against the bank, consulted a solicitor, who undertook to attend to the matter, but omitted to take any steps, and in the month of April following (1886), the plaintiff through another solicitor made a demand on the bank for payment, which was refused. The demand so made was the first notice the bank had of the fraud which had been practiced on them.

Held, affirming the judgment of the Chancery Division (14 O. R. 586), (1) that the plaintiff in entrusting the receipt to S. S. was not guilty of any act of negligence; (2) that his delay in notifying the defendants of the fraud perpetrated on them was not a breach of any legal duty on his part so as to stop him from recovering the amount of his deposit.

(3) *Scott vs. The Bank of New Brunswick*, 31 N. B. 21 (1891).

S., a shipmaster, deposited \$1,000 with a bank in 1883, and received a deposit receipt therefor. He left the receipt with R., the managing owner of his vessel. Soon afterwards he went to sea and remained away till July, 1887. In December, 1884, R. took the receipt to the bank, with the name of S. endorsed on it, and gave the receipt to the bank, receiving a deposit receipt for the same amount payable to himself. This R. gave the bank as collateral security for the payment of his note for \$1,000 discounted by them, and they afterwards applied it in payment of the note. On the return of S., R. admitted that he had drawn the money and used it, and upon S. threatening him with criminal proceedings, he begged S. not to expose him, and said that if he would wait he would pay him. At this time, R. owed S. \$2,650 besides the amount of the deposit receipt, and he gave S. a bill of exchange for £250 and a mortgage for \$2,500 on some property in which he said he had an interest, payable in one year. S. said nothing to the bank about the matter, but went away again, and did not return for two years. R. left the country in November, 1888. On the return of S., in July, 1889, finding that the bill was dishonored, and that nothing was realized on the mortgage, he demanded the money from the bank, and on their refusal to pay, brought this action for the amount. The jury found that S. had not indorsed the receipt, and that the \$1,000 was not included in the mortgage; and gave a verdict for S.

Held, that S. was estopped by his conduct from recovering against the bank.

(Note—14 Occ. N. 388). The action was twice tried. On the first trial a verdict was given in favor of S., the jury having found that when R. took the deposit receipt to the bank, with the name of S. endorsed on it, such endorsement had not been written by S., and the trial judge held that the finding was, in effect, that of forgery by R., which could not be ratified. The jury also found that the security taken by S. did not include the \$1,000. The full court ordered a new trial on the ground that the last finding was against evidence (31 N. B. Repts. 21), and an appeal from that decision to the Supreme Court was not entertained (21 S. O. R. 30). On the second trial the bank obtained a verdict which was affirmed by the full court. On appeal from the latter decision, the Supreme Court of Canada on the 21st May, 1894,

Held, affirming the judgment of the court below (13 Occ. N. 248), and the doctrine of estoppel was not involved in the case; that R. obtained the money from the bank by falsely representing that he had authority from S.; that S. by ratifying and confirming the payment, adopted the agency, and his act made the payment equivalent to one to a person having authority to receive it; and it made no difference, that, by his false representations R. may have committed an indictable offence. See 23 S. C. R. 277 (1894).

96. Bank not bound to see to Trusts on Deposits.—The bank shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any deposit made under the authority of this Act is subject.

2. Receipt of one of two Joint Depositors, or of a Majority of more than two sufficient.—Except only in the case of a lawful claim, by some other person before repayment, the receipt of the person in whose name any such deposit stands, or, if it stands in the names of two persons, the receipt of one, or, if it stands in the names of more than two persons, the receipt of a majority of such persons, shall, notwithstanding any trust to which such deposit is then subject, and whether or not the bank sought to be charged with such trust, and with which the deposit has been made, had notice thereof, be a sufficient discharge to all concerned for the payment of any money payable in respect of such deposit.

3. Application.—The bank shall not be bound to see to the application of the money paid upon such receipt. 53 V., c. 31, s. 84.

Section 52 provides that the bank shall not be bound to see to the execution of any trust to which any share of its stock is subject. This section contains a similar provision as to any trust to which any deposit made under the authority of this section is subject. See notes to sec. 52.

(1) *Kerry vs. Merchants' Bank*, 32 L. C. J. 121 (1888).

A bank authorized to receive deposits is not bound to see to the execution of any trust, whether express, implied or constructive, to which these deposits are subject; that the receipt furnished by the person in whose name these deposits are entered is a valid discharge.

97. If Depositor dies, Claim not exceeding \$500—How proved.—If a person dies, having a deposit with the bank not exceeding the sum of five hundred dollars, the production to the bank and deposit with it of,—

(a) any authenticated copy of the probate of the will of the deceased depositor, or of letters of administration of his estate, or of letters of verification of heirship, or of the act of curatorship or tutorship, granted by any court in Canada having power to grant the same, or by any court or authority in England, Wales, Ireland, or any British colony, or of any testament, testamentary or testament dative expede in Scotland; or,

(b) an authentic notarial copy of the will of the deceased depositor, if such will is in notarial form, according to the law of the province of Quebec; or,

(c) if the deceased depositor died out of His Majesty's dominions, any authenticated copy of the probate of his will, or letters of administration of his property, or other document of like import, granted by any court or authority having the requisite power in such matters:

shall be sufficient justification and authority to the directors for paying such deposit, in pursuance of and in conformity to such probate, letters of administration, or other document as aforesaid. 63-64 V., c. 26, s. 20.

DOMINION GOVERNMENT CHEQUES.

98. To be Paid at Par.—The bank shall not charge any discount or commission for the cashing of any official cheque of the Government of Canada or of any department thereof, whether drawn on the bank cashing the cheque or on any other bank. 53 V., c. 31, s. 103.

Cf. secs. 93 and 94 as to agency and collection charges in other cases.

THE PURCHASE OF THE ASSETS OF A BANK.

99. Bank may sell Assets to another Bank.—Any bank may sell the whole or any portion of its assets to any other bank which may purchase such assets; and the selling and purchasing banks may, for such purposes, enter into an agreement of sale and purchase, which agreement shall contain all the terms and conditions connected with the sale and purchase of such assets. 63-64 V., c. 26, s. 33.

100. Consideration.—The consideration for any such sale and purchase may be as agreed upon between the selling and purchasing banks.

2. If in Shares of Capital Stock.—If the consideration, or any portion thereof, is shares of the capital stock of the purchasing bank, the agreement shall provide for the amount of the shares of the purchasing bank to be paid to the selling bank.

3. Not considered Issued until Sold or Distributed.—Until such shares so paid to the selling bank have been sold by such bank, or have been distributed among and accepted by the shareholders of such bank, they shall not be considered issued shares of the purchasing bank for the purposes of its note circulation. 63-64 V., c. 26, s. 34.

101. Agreement of Sale to be Submitted to Selling Shareholders at Meeting.—The agreement of sale and purchase shall be submitted to the shareholders of the selling bank, either at the annual general meeting of such bank, or at a special general meeting thereof called for the purpose.

2. Copy to Each Shareholder by Mail.—A copy of the agreement shall be mailed, postpaid, to each shareholder of such bank to his last known address, at least four weeks previously to the date of the meeting at which the agreement is to be submitted, together with a notice of the time and place of the holding of such meeting. 63-64 V., c. 26, s. 35.

102. Agreement may be Executed if they Approve.—If at such meeting the agreement is approved by resolution carried by the votes of shareholders, present in person or represented by proxy, representing not less than two-thirds of the amount of the subscribed capital stock of the bank, the agreement may be executed under the seals of the banks, parties thereto, and application may be made to the Governor-in-Council, through the Minister, for approval thereof.

2. Approval of Governor-in-Council.—Until the agreement is approved by the Governor in Council it shall not be of any force or effect. 63-64 V., c. 26, s. 36.

103. Approval of Shareholders of Purchasing Bank.—If the agreement provides for the payment of the consideration for such sale and purchase, in whole or in part, in shares of the capital stock of the purchasing bank, and for such purpose it is necessary to increase the capital stock of such bank, the agreement shall not be executed on behalf of the purchasing bank, unless nor until it is approved by the shareholders thereof at the annual general meeting, or at a special general meeting of such shareholders. 63-64 V., c. 26, s. 37.

104. Necessary Increase of Stock may be approved.—The Governor in Council may, on the application for his approval of the agreement, approve of the increase of the capital stock of the purchasing bank, which is necessary to provide for the payment of the shares of such bank to the selling bank, as provided in the said agreement. 63-64 V., c. 26, s. 38.

105. Ordinary Provisions for Increase not to apply.—The provisions of this Act with regard to,—

(a) the increase of the capital stock of the bank by by-law of the shareholders approved by the Treasury Board; and,

(b) the allotment and sale of such increased stock; shall not apply to any increase of stock made or provided for under the authority of the last two preceding sections. 63-64 V., c. 26, s. 38.

The provisions referred to are contained in secs. 33 and 34.

106. Conditions on which Governor-in-Council may approve Agreement.—The approval of the Governor-in-Council shall not be given to the agreement, unless,—

(a) the approval thereof is recommended by the Treasury Board;

(b) the application for approval thereof is made, by or on behalf of the bank executing it, within three months from the date of execution of the agreement; and,

(c) it appears to the satisfaction of the Governor in Council that all the requirements of this Act in connection with the approval of the agreement by the shareholders of the selling and purchasing banks have been complied with, and that notice of the intention of the banks to apply to the Governor in Council for the approval of the agreement has been published for at least four weeks in the *Canada Gazette*, and in one or more newspapers published in places where the chief offices or places of business of the banks are situate.

2. Information.—Such banks shall afford all information that the Minister requires.

3. Approval may be Refused.—Nothing herein contained shall be construed to prevent the Governor in Council or the Treasury Board from refusing to approve of the agreement or to recommend its approval. 63-64 V., c. 26, s. 39.

107. Further Conditions.—The agreement shall not be approved of unless it appears that,—

(a) proper provisions have been made for the payment of the liabilities of the selling bank;

(b) the agreement provides for the assumption and payment by the purchasing bank of the notes of the selling bank issued and intended for circulation, outstanding and in circulation; and,

(c) the amounts of the notes of both the purchasing and selling banks, issued for circulation, outstanding and in circulation,

as shown by the then last monthly returns of the banks, do not altogether exceed the then paid-up capital of the purchasing bank; or, if the amount of such notes does exceed such paid-up capital, an amount in cash, equal to the excess of such notes over such paid-up capital, has been deposited by the purchasing bank with the Minister.

2. **Deposit.**—The amount so deposited as aforesaid shall be held by the Minister as security for the redemption of the said excess of notes; and, when such excess, or any portion thereof, has been redeemed and cancelled, the amount so deposited, or an amount equal to the amount of excess so redeemed and cancelled, shall from time to time, be repaid by the Minister to the purchasing bank, but without interest, on the application of such bank, and on the production of such evidence as the Minister may require to show that the notes in regard to which such repayment is asked have been redeemed and cancelled. 63-64 V., c. 27, s. 1.

108. Notes of Selling Bank to become Notes of Purchasing Bank.—The notes of the selling bank so assumed and to be paid by the purchasing bank shall, on the approval of the agreement, be deemed to be, for all intents and purposes, notes of the purchasing bank issued for circulation; and the purchasing bank shall be liable in the same manner and to the same extent as if it had issued them for circulation.

2. **Circulation Fund.**—The amount at the credit of the selling bank in the Circulation Fund shall, on the approval of the agreement, be transferred to the credit of the purchasing bank.

3. **Notes to be Called in.**—The notes of the selling bank shall not be re-issued, but shall be called in, redeemed and cancelled as quickly as possible. 63-64 V., c. 26, s. 41.

As to the issue and circulation of notes, see sec. 61. The Circulation Fund as provided for by secs. 64 *et seq.*

109. Evidence of Approval of Governor in Council.—The approval by the Governor in Council of the agreement shall be evidenced by a certified copy of the order in council approving thereof.

2. **Order in Council conclusive.**—Such certified copy shall be conclusive evidence of the approval of the agreement therein referred to, and of the regularity of all proceedings in connection therewith. 63-64 V., c. 26, s. 42.

110. On Approval of Governor-in-Council the Assets pass.—On the agreement being approved of by the Governor in Council, the assets therein referred to as sold and purchased shall, in accordance with and subject to the terms thereof, and without any further conveyance, become vested in the purchasing bank.

2. **Further Assurance.**—The selling bank shall, from time to time, subject to the terms of the agreement, execute such formal and separate conveyances, assignments and assurances, for registration purposes or otherwise, as are reasonably required to confirm or evidence the vesting in the purchasing bank of the full title or ownership of the assets referred to in the agreement. 63-64 V., c. 26, s. 43.

111. Selling Bank to cease Business and be wound up.—As soon as the agreement is approved of by the Governor in Council, the selling bank shall cease to issue or re-issue notes for circulation, and shall cease to transact any business, except such as is necessary to enable it to carry out the agreement, to realize upon any as-

sets not included in the agreement, to pay and discharge its liabilities, and generally to wind up its business; and the charter or Act of incorporation of such bank, and any Acts in amendment thereof then in force, shall continue in force only for the purposes in this section specified. 63-64 V., c. 26, s. 44.

RETURNS.

112. Monthly.—Monthly returns shall be made by the bank to the Minister in the form set forth in schedule D to this Act.

2. Within first 15 days.—Such returns shall be made up and sent in within the first fifteen days of each month, and shall exhibit the condition of the bank on the last juridical day of the month last preceding.

3. How signed.—Such returns shall be signed by the chief accountant and by the president, or vice-president, or the director then acting as president, and by the manager, cashier or other principal officer of the bank at its chief place of business. 53 V., c. 31, s. 85.

As to returns to be made by a bank to the government, cf. secs. 113 (special returns), 114 (unpaid dividends, unpaid drafts, certified list of shareholders), 147 to 151 (penalties), 153 (false statement.)

SCHEDULE D.

Return of the liabilities and assets of the	day of	, A. D.	bank on
the			
Capital authorized.. . . .			\$
Capital subscribed.. . . .			
Capital paid-up.. . . .			
Amount of rest or reserve fund.. . . .			
Rate per cent. of last dividend declared.. . . .			per cent.

LIABILITIES.

1. Notes in circulation.. . . . \$
2. Balance due to Dominion Government, after deducting advances for credits, pay-lists, etc...
3. Balances due to Provincial Governments .. .
4. Deposits by the public, payable on demand, in Canada
5. Deposits by the public, payable after notice or on a fixed day, in Canada.. . . .
6. Deposits elsewhere than in Canada.. . . .
7. Loans from other banks in Canada, secured, including bills rediscounted.. . . .
8. Deposits made by, and balances due to, other banks in Canada.. . . .
9. Balances due to agencies of the bank, or to other banks or agencies in the United Kingdom
10. Balances due to agencies of the bank, or to other banks or agencies, elsewhere than in Canada and the United Kingdom.
11. Liabilities not included under foregoing heads

\$

ASSETS.

1. Specie \$
2. Dominion Notes
3. Deposits with Dominion Government for security of note circulation
4. Notes of and cheques on other banks
5. Loans to other banks in Canada, secured, including bills rediscounted
6. Deposits made with, and balances due from, other banks, in Canada.. . . .
7. Balances due from agencies of the bank, or from other banks or agencies, in the United Kingdom.. . . .
8. Balances due from agencies of the bank, or from other banks or agencies, elsewhere than in Canada and the United Kingdom.. . . .
9. Dominion and Provincial Government securities.. . . .
10. Canadian municipal securities, and British, or foreign, or colonial public securities other than Canadian.. . . .
11. Railway and other bonds, debentures and stocks
12. Call and short loans on stocks and bonds, in Canada.. . . .
13. Call and short loans elsewhere than in Canada.
14. Current loans in Canada.. . . .
15. Current loans elsewhere than in Canada.. . . .
16. Loans to the Government of Canada.. . . .
17. Loans to Provincial Governments.. . . .
18. Overdue debts.. . . .
19. Real estate other than bank premises
20. Mortgages on real estate sold by the bank ..
21. Bank premises.. . . .
22. Other assets not included under the foregoing heads.

39

Aggregate amount of loans to directors, and firms of which they are partners, \$

Average amount of specie held during the month, \$

Average amount of Dominion notes held during the month, \$

Greatest amount of notes in circulation at any time during the month. \$2.

I declare that the above return has been prepared under my directions and is correct according to the books of the bank.

E. F.,

Chief Accountant.

We declare that the foregoing return is made up from the books of the bank, and that to the best of our knowledge and belief it is correct, and shows truly and clearly the financial position of the bank; and we further declare that the bank has never, at any time during the period to which the said return relates, held less than forty per cent. of its cash reserves in Dominion notes.

(Place) this day of

A. B., *President.*

C. D., General Manager.

The officers making the return should be careful to classify the items of assets and liabilities under the proper heads. Improper classification of items may constitute a false or deceptive statement within sec. 153.

The monthly returns of the various banks are published each month in the *Canada Gazette*.

113. Special Returns.—The Minister may also call for special returns from any bank, whenever, in his judgment, they are necessary to afford a full and complete knowledge of its condition.

2. How made.—Such special returns shall be made and signed in the manner and by the persons specified in the last preceding section.

3. Within 30 Days from Demand.—Such special returns shall be made and sent in within thirty days from the date of the demand therefor by the Minister: Provided that the Minister may extend the time for sending in such special returns for such further period not exceeding thirty days, as he thinks expedient. 53 V., c. 31, s. 86.

The special returns which may be called for under this section are in addition to the monthly returns required to be made by sec. 112.

114. Annual.—The bank shall, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return,—

(a) of all dividends which have remained unpaid for more than five years; and,

(b) of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return: Provided that, in the case of moneys deposited for a fixed period, the said term of five years shall be reckoned from the date of the termination of such fixed period.

2. What return shall show.—The return mentioned in the last preceding subsection shall set forth,—

(a) the name of each shareholder or creditor to whom such dividends, amounts or balances are according to the books of the bank payable;

(b) the last known address of each such shareholder or creditor;

(c) the amount due to each shareholder or creditor;

(d) the agency of the bank at which the last transaction took place;

(e) the date of such last transaction, and;

(f) if such shareholder or creditor is known to the bank to be dead, the names and addresses of his legal representatives, so far as known to the bank.

3. Further Annual Returns—Particulars.—The bank shall likewise, within twenty days after the close of each calendar year, transmit or deliver to the Minister a return of all drafts or bills of exchange, issued by the bank to any person, and remaining unpaid for more than five years prior to the date of such return, setting forth so far as known,—

(a) the names of the persons to whom, or at whose request such drafts or bills of exchange were issued;

(b) the addresses of such persons;

(c) the names of the payees of such drafts or bills of exchange;

(d) the amounts and dates of such drafts or bills of exchange;

(e) the names of the places where such drafts or bills of exchange were payable; and,

(f) the agencies of the bank respectively from which such drafts or bills of exchange were issued.

4. How Annual Returns signed.—The returns required by the foregoing provisions of this section shall be signed by the chief accountant, and by the president or vice-president or the director then acting as president, and by the manager, cashier or other principal officer of the bank, at its chief place of business.

5. Annual List.—The bank shall also, within twenty days after the close of each calendar year, transmit or deliver to the Minister a certified list showing,—

(a) the names of the shareholders of the bank on the last day of such calendar year, with their additions and residences;

(b) the number of shares then held by them respectively; and,

(c) the value at par of such shares.

6. To Parliament.—The Minister shall lay such returns and lists before Parliament at the next session thereof. 53 V., c. 31, ss. 87 and 88; 63-64 V., c. 26, s. 21.

The effect of the first two sub-sections is to secure to a bank, so long as it is solvent, the benefit of unpaid dividends and other amounts and balances in respect of which transactions have ceased to take place or interest ceased to be paid. Until the dividends, etc., are claimed, the sole obligation of the bank is to make the required returns so as to give notice by means of the government publications to any persons who may be entitled and allow them an opportunity to claim payment.

Under sec. 126, the liability of a bank for moneys deposited with it or dividends declared and payable on its capital stock is never barred by any statute of limitations or enactment or law relating to prescription. It is therefore necessary, in the event of the winding-up of a bank, to provide a fund to meet claims which may be made from time to time to unpaid dividends and deposits, and interest, if any. This is done by sec. 115.

The purpose of sub-sec. 3 is to give notice to persons in whose favour any drafts or bills may have been issued, and to allow them an opportunity to claim the proceeds.

The lists of shareholders are published annually by the government.

PAYMENTS TO THE MINISTER UPON WINDING UP.

115. Unclaimed Moneys.—If, in the event of the winding up of the business of the bank in insolvency, or under any general winding-up Act, or otherwise, any moneys payable by the liquidator, either to shareholders or depositors, remain unclaimed,—

(a) for the period of three years from the date of suspension of payment by the bank; or,

(b) for a like period from the commencement of the winding up of such business; or,

(c) until the final winding-up of such business if the business is finally wound up before the expiration of the said three years; such moneys and all interest thereon shall, notwithstanding any statute of limitations or other Act relating to prescription, be paid to the Minister, to be held by him subject to all rightful claims on behalf of any person other than the bank.

2. Governor in Council may order Payment to Person entitled.—If a claim to any moneys so paid is thereafter established to the satisfaction of the Treasury Board, the Governor in Council shall on the report of the Treasury Board, direct payment thereof

to be made to the person entitled thereto, together with interest on the principal sum thereof, at the rate of three per centum per annum, for a period not exceeding six years from the date of payment thereof to the Minister as aforesaid: Provided that no such interest shall be payable on such principal sum, unless interest thereon was payable by the bank paying the same to the Minister.

3. **Bank discharged.**—Upon payment to the Minister as herein provided, the bank and its assets shall be held to be discharged from further liability for the amounts so paid. 53 V., c. 31, s. 88.

See notes to sec. 114.

116. Circulation outstanding at Distribution of Assets.—

Upon the winding up of a bank in insolvency or under any general winding-up Act, or otherwise, the assignees, liquidators, directors or other officials in charge of such winding up shall, before the final distribution of the assets, or within three years from the commencement of the suspension of payment by the bank, whichever shall first happen, pay over to the Minister a sum out of the assets of the bank equal to the amount then outstanding of the notes intended for circulation issued by the bank;

2. **Bank relieved.**—Upon such payment being made, the bank and its assets shall be relieved from all further liability in respect of such outstanding notes.

3. **Minister to Redeem.**—The sum so paid shall be held by the Minister and applied for the purpose of redeeming, whenever presented, such outstanding notes, without interest. 53 V., c. 31, s. 88.

This section is designed to guard against the charging of the Bank Circulation Redemption Fund with the payment of the notes of an insolvent bank which are presented after the liquidator has distributed the assets.

117. Association to Appoint.—The Association shall, if a bank suspends payment in specie or Dominion notes of any of its liabilities as they accrue, forthwith appoint a curator to supervise the affairs of such bank.

2. **Removal.**—The Association may at any time remove the curator, and may appoint another person to act in his stead. 63-64 V., c. 26, s. 24.

The association means the Canadian Bankers' Association: see sec. 2.

118. Appointment to be under By-law of Association.—

The appointment of the curator shall be made in the manner provided for in the by-law of the Association made in that behalf as hereinafter provided;

2. **If no By-law.**—If there is no such by-law, the appointment shall be made in writing by the president of the Association, or by the person acting as president. 63-64 V., c. 26, s. 25.

The by-law referred to is made in pursuance of sec. 124.

119. Powers and Duties of Curator.—The curator shall assume supervision of the affairs of the bank, and of all necessary arrangements for the payment of the notes of the bank issued for circulation, and, at the time of his appointment, outstanding and in circulation.

2. **Idem.**—The curator shall generally have all powers and shall take all steps and do all things necessary or expedient to protect the rights and interests of the creditors and shareholders of the bank, and to conserve and ensure the proper disposition, according to law, of the assets of the bank; and, for the purposes of this sec-

tion, he shall have free and full access to all books, accounts, documents and papers of the bank.

3. *Idem.*—The curator shall continue to supervise the affairs of the bank until he is removed from office, or until the bank resumes business, or until a liquidator is duly appointed to wind up the business of the bank. 63-64 V., c. 26, s. 26.

120. Officers and Clerks to assist Curator.—The president, vice-president, directors, general manager, managers, clerks and officers of the bank shall give and afford to the curator all such information and assistance as he requires in the discharge of his duties. 63-64 V., c. 26, s. 27.

121. No Act of Directors valid unless approved by Curator.—No by-law, regulation, resolution or act, touching the affairs or management of the bank, passed, made or done by the directors during the time the curator is in charge of the bank, shall be of any force or effect until approved in writing by the curator. 63-64 V., c. 26, s. 27.

122. Curator to make Returns as required by Minister.—The curator shall make all returns and reports, and shall give all information to the Minister, touching the affairs of the bank, that the Minister requires of him. 63-64 V., c. 26, s. 28.

123. Remuneration of Curator.—The remuneration of the curator for his services, and his expenses and disbursements in connection with the discharge of his duties, shall be fixed and determined by the Association, and shall be paid out of the assets of the bank, and in case of the winding-up of the bank shall rank on the estate equally with the remuneration of the liquidator. 63-64 V., c. 26, s. 29.

Cf. sec. 92 of the Winding-up Act.

BY-LAWS OF THE CANADIAN BANKERS' ASSOCIATION.

124. How made—As to What Subjects.—The Association may at any meeting thereof, with the approval of two-thirds in number of the banks represented at such meeting, if the banks so approving have at least two-thirds in par value of the paid-up capital of the banks so represented, make by-laws, rules and regulations respecting,—

(a) all matters relating to the appointment or removal of the curator, and his powers and duties;

(b) The supervision of the making of the notes of the banks which are intended for circulation, and the delivery thereof to the banks;

(c) The inspection of the disposition made by the banks of such notes;

(d) The destruction of notes of the banks; and

(e) The imposition of penalties for the breach or non-observance of any by-law, rule or regulation made by virtue of this section.

2. Approval of Treasury Board.—No such by-law, rule or regulation, and no amendment or repeal thereof, shall be of any force or effect until approved by the Treasury Board.

3. Notice to other Banks.—Before any such by-law, rule or regulation, or any amendment or repeal thereof is so approved, the Treasury Board shall submit it to every bank which is not a member of the Association, and give to each such bank an opportunity of being heard before the Treasury Board with respect thereto.

4. Enforcement of By-laws.—The Association shall have all powers necessary to carry out, or to enforce the carrying out, of any by-law, rule or regulation, or any amendment thereof, so approved by the Treasury Board. 63-64 V., c. 26, ss. 30 and 31.

The Association is defined by sec. 2 to mean the Canadian Bankers' Association, incorporated by 63 and 64 Vict., c. 93.

Certain by-laws passed by the Association in pursuance of its Act of Incorporation, and of secs. 117 to 124 of the Bank Act, have been approved by the Treasury Board and have the force of law. By-laws 14 and 15 relate to the curator. By-law 13 relates to note circulation. By-law 16 relates to clearing houses.

INSOLVENCY.

125. Double Liability of Shareholders.—In the event of the property and assets of the bank being insufficient to pay its debts and liabilities, each shareholder of the bank shall be liable for the deficiency, to an amount equal to the par value of the shares held by him, in addition to any amount not paid up on such shares. 53 V., c. 31, s. 89.

This section is commonly known as the double liability clause. Its effect is to render a shareholder liable (in addition to the extent to which his shares are not paid up) for an amount equal to the par value of the shares held by him, or so much of such amount as may be needed to pay the debts and liabilities of the bank.

As to what persons are shareholders, see secs. 37, 43 *et seq.*, 53 and 130. Cf. also secs. 51, 52, 53 and 71 of the Winding-up Act, *supra*.

(1) *Court v. Waddell*, 4 L. N. 78 (1881).

A director of a bank who has drawn dividends on his stock cannot escape double liability on account of the absence of a by-law authorizing the issue of the preferential stock.

(2) *Gilman vs. Court*, 13 R. L. 619 (1882).

Where a shareholder of a bank acquires debts of the bank after the suspension of the bank, he cannot offer these debts in compensation of calls on his double liability made by the liquidator under 34 V., c. 5.

(3) *Exchange Bank vs. Montreal City and District Savings Bank*, M. L. R. 2 S. C. 51 (1885).

A bank whose shares are transferred to a savings bank is presumed to know that they are held by the latter as collateral security, inasmuch as under section 18 of 34 Vict., chap. 7, a savings bank cannot acquire bank shares or hold them except as pledgee.

(4) *Liquidators of the Maritime Bank vs. Troop*, 16 S. C. R. 456 (1888).

A contributory of an insolvent company, who is also a creditor, cannot set off the debt due to him by the company against calls made in the course of winding-up proceedings in respect of the double liability imposed by the Bank Act.

(5) See *Re Central Bank vs. Home Savings and Loan Co.'s Case*, 18 O. A. R. 489 (1891). See under sec. 130.

(1) *Senecal vs. Exchange Bank*, M. L. R., 2 S. C. 107 (1884).

The creditor of an incorporated bank which has suspended its payments can, even before the expiration of 90 days from the date of such suspension, sue the bank and obtain judgment for the amount of his claim.

(2) *Exchange Bank vs. Hall*, M. L. R., 2 Q. B. 469 (1886).

The respondent having funds to his credit in a bank which had suspended payment, drew cheques on the bank for various sums. These cheques were accepted by the bank on the same day, and the respondent then, for valuable consideration, disposed of them to various parties, who were paid the respective amounts by the bank by credits or otherwise.

Held, that the bank had no action against respondent to recover the amount of the cheques so paid, their recourse, if any, being against the parties to whom they had paid the money.

(3) *Exchange Bank vs. Montreal Coffee House Association*, M. L. R., 2 S. C. 141 (1886).

The provisions of 45 Vict., chap. 23, override any rule as to insolvency contained in the Civil Code, therefore only payments made by an insolvent corporation within thirty days before the commencement of the winding-up order, *i.e.*, the date of the order made by the court for the winding up, can be recovered by the liquidators.

In any case, a deposit of money made with a bank on the day and at the very hour when it suspended payments may lawfully be returned to the depositor.

(4) *Ontario Bank vs. Chaplin*, 20 S. C. R. 152 (1891).

A person who makes a deposit with a bank after its suspension, the deposit consisting of cheques of third parties drawn on and accepted by the bank in question, is not entitled to be paid by privilege the amount of such deposit.

Sisters of Charity v. Kent R. J. Q., 13 K. B. 483.

After a bank has suspended payments, and its insolvency is notorious, compensation of a debt due to the bank cannot be effected by a transfer to the debtor of debts due by the bank to third parties, where such transfer has been made to the debtor after the suspension and within thirty days prior to winding up proceedings under the Winding-up Act. This rule is not affected by the circumstance that the amounts offered in compensation consisted of moneys deposited with the bank by such third parties, for the special purpose of aiding the debtor to meet his indebtedness to the bank, but not transferred to the debtor until after the suspension of payments.

126. Liability of Bank—No Prescription.—The liability of the bank under any law, custom, or agreement to repay moneys deposited with it and interest (if any) and to pay dividends declared and payable on its capital stock, shall continue notwithstanding any statute of limitations or any enactment or law relating to prescription.

2. Retrospective.—This section applies to money heretofore or hereafter deposited, and to dividends heretofore or hereafter declared. 53 V., c. 31, s. 90.

As an incidental consequence of this section, a bank must preserve for an indefinite time the vouchers for payments made by it.

127. Suspension for 90 Days to constitute Insolvency.—Any suspension by the bank of payment of any of its liabilities as they accrue, in specie or Dominion notes, shall, if it continues for ninety days consecutively, or at intervals within twelve consecutive months, constitute the bank insolvent, and work a forfeiture of its charter or Act of incorporation, so far as regards all further banking operations.

2. Charter to remain in Force only for Winding up.—The charter or Act of incorporation of the bank shall, in such case, remain in force only for the purpose of enabling the directors, or

other lawful authority, to make and enforce the calls mentioned in the next following section of this Act, and to wind up the business of the bank. 63 V., c. 31, s. 91.

After a suspension of payment for a less period than would constitute it insolvent under this section, a bank may resume business, but if it does so without the consent of the curator, its right to issue or re-issue notes is subject to the provisions of sec. 61. If the suspension continues for more than 90 days, either consecutively, or at intervals within 12 consecutive months, such suspension constitutes the bank insolvent and operates a forfeiture of its charter to the extent provided for by sec. 127.

This section is supplementary to the provisions of the Winding-up Act, see secs. 3 and 4 of that Act.

128. If no Proceedings within Three Months thereafter, Directors to make Calls.—If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank, continues for three months after the expiration of the time which, under the last preceding section, would constitute the bank insolvent, and if no proceedings are taken under any Act for the winding up of the bank, the directors shall make calls on the shareholders thereof, to the amount they deem necessary to pay all the debts and liabilities of the bank, without waiting for the collection of any debts due to the bank or the sale of any of its assets or property;

2. Intervals.—Such calls shall be made at intervals of thirty days.

3. Notice.—Such calls shall be made upon notice to be given at least thirty days prior to the day on which any such call shall be payable. 6....

4. Number.—Any number of such calls may be made by one resolution.

5. Amount.—No such call shall exceed twenty per centum on each share.

6. Payment.—Payment of such calls may be enforced in like manner as payment of calls on unpaid stock may be enforced.

7. First Call.—The first of such calls may be made within ten days after the expiration of the said three months.

8. Procedure.—In the event of proceedings being taken, under any Act, for the winding-up of the bank in consequence of the insolvency of the bank, the said calls shall be made in the manner prescribed for the making of such calls in such Act.

9. Forfeiture for Non-payment.—Any failure on the part of any shareholder liable to any such call to pay the same when due, shall work a forfeiture by such shareholder of all claim in or to any part of the assets of the bank: Provided that such call, and any further call thereafter, shall nevertheless be recoverable from him as if no such forfeiture had been incurred. 53 V., c. 31, ss. 92, 93 and 94.

After a bank has been constituted insolvent under sec. 127, proceedings may be taken under the Winding-up Act. If no such proceedings are taken and the suspension of payment in full of all or any of the notes or other liabilities continues for three months after the bank has become insolvent under that section, the directors are obliged under sec. 128 to make calls on the shareholders to the amount the directors deem necessary to pay all the debts and liabilities of the bank, without waiting for the collection of any debts due to it or the sale of any of its assets or property.

As to the application for a winding-up order, and the appointment of a liquidator, see secs. 151 *et seq* of the Winding-up Act.

As to the effect of a Winding-up order, see secs. 20 to 23 of the Winding-up Act.

The settlement of the list of contributories, the making of calls upon shareholders, etc., is provided for by secs. 48 *et seq.* of the Winding-up Act.

A director who refuses to make or to enforce, or to concur in making or in enforcing, any call under sec. 128 is criminally liable under sec. 154 of the Bank Act.

129. Liability of Directors not Diminished.—Nothing contained in the four sections last preceding shall be construed to alter or diminish the additional liabilities of the directors as herein mentioned and declared. 53 V., c. 31, s. 95.

See, sec. 58 (impairing capital); sec. 139 (pledging or improperly issuing or taking bank notes); sec. 153 (false or deceptive statement); sec. 155 (giving undue preference).

130. Liabilities of Shareholders who have Transferred their Stock or whose Subscriptions have been Cancelled.—(a) Persons who, having been shareholders of the bank, have only transferred their shares, or any of them, to others, or registered the transfer thereof, within sixty days before the commencement of the suspension of payment by the bank; and,

(b) Persons whose subscriptions to the stock of the bank have been cancelled, in manner hereinbefore provided, within the said period of sixty days before the commencement or the suspension of payment by the bank; shall be liable to all calls on the shares held or subscribed for by them, as if they held such shares at the time of such suspension or payment, saving their recourse against those by whom such shares were then actually held. 53 V., c. 31, s. 96.

Under section 125 every holder of a share of bank stock assumes a liability to contribute to the assets of the bank, in the event of its insolvency, a sum equal to the par value of the share. In the case of a person within sec. 37, this liability continues in force even after the registration upon the bank books of a transfer of the share to another person. It is extinguished only when the bank has continued for 60 days, after such registration, to carry on its business without any suspension of payment. Every transaction in bank shares must be taken to be made subject to the possibility that this well-known statutory liability may be enforced in case the insolvency of the bank occurs within the statutory period. The transferee or actual holder of a share at the time of the suspension is liable himself, and he is bound, as between himself and the person from whom he purchased the share, to assume, and indemnify the latter against, the liability attached to the share.

See *Boulton v. Gzowski*, 1896, 28 O. R. 302, 24 A. R. 502, 29, S. C. R. 54.

(1) *In re Central Bank, Baine's Case*, 16 O. A. R. 237 (1889).

No special directions as to the transfer of shares had been formally adopted by the directors of the bank, but the transfer book had been prepared for and adapted to a system of marginal transfer. One C. transferred certain shares in blank, subject by a marginal note initialed by C., to the order of a broker, and subject by subsequent marginal note, initialed by the broker, to the order of B. B., signed an acceptance of the shares immediately under the transfer in blank signed by C., and was entered in the books of the bank as

the holder of the shares, the intermediate transfers to and from the broker being omitted. The transfer to B. and acceptance by him took place within a month of the time of the suspension.

Held, that this transfer and acceptance were a sufficient compliance with, or at least not in any way a violation of the statutory provisions, and that B. became the legal holder of the shares, and was liable as a contributory.

Sections 70 and 77 of R. S. C., 1886, ch. 20, must be read together, and make liable as contributories all those who hold shares at the time of the suspension of the bank, or who have held shares at any time within one month before the suspension.

(2) *Re Central Bank, Henderson's Case*, 17 O. R. 110 (1889).

Held, that H., who had acquired certain shares in a bank within one month before the suspension of the bank, was rightly on the list of contributories as to these shares, but that his transferrors should also be placed upon it.

(3) *Re Central Bank vs. Home Savings and Loan Co.'s Case*, 18 O. A. R. 489 (1891).

After a winding-up order has been made it is too late for holders of shares, entered as such in the books of the bank, to escape liability by showing irregularities in transfers to more or less remote predecessors in title.

A loan company which advances money on the security of shares, which are transferred to it, and accepted by it, in the ordinary absolute form, cannot escape liability on the ground that it is merely a trustee for the borrower.

(4) *Re Central Bank vs. Hogg*, 19 O. R. 7 (1892).

A minor's father signed her name to a stock subscription book of a bank, paid the calls and received the dividend cheques which were endorsed by her at her father's request, the moneys being received by him. The bank was put into liquidation by winding-up proceedings, and the order for call against contributories was made three months before she came of age. A year after the liquidation commenced, she took proceedings to have her name removed from the list of contributories:—

Held, that she was not liable as a contributory, and that her name must be removed from the list.

(5) *Ville Marie Bank vs. Kent*, 4 Q. P. R., 429.

One who holds bank shares as institute may be held liable as a contributory when the bank is put into liquidation.

(6) *Tempest vs. Bertrand*, R. J. Q., 19 S. O., 365 (1901).

The mandatory to whom the mandator has confided a sum of money to discharge a debt due by the mandator to a third party residing abroad, and who, during the time necessary to find the creditor and obtain from him a sufficient power of attorney to make the payment, has deposited the said sum in a bank duly constituted and then enjoying the public confidence, instead of keeping it himself,—is not responsible for the subsequent failure of the said bank, before he was able to execute his mandate.

(7) *Kent vs. Bastien*, R. J. Q., 12 K. B., 120 (1902).

A liquidator of a bank in liquidation is not as such qualified to sue a debtor of the bank, on a note matured before the proceedings in liquidation, but the action should be taken in the name of the bank.

131. Order of Charges.—In the case of the insolvency of any bank,—

(a) The payment of the notes issued or reissued by such bank, intended for circulation, and then in circulation, together with any interest paid or payable thereon as hereinbefore provided, shall be the first charge upon the assets of the bank;

(b) The payment of any amount due to the Government of Canada, in trust or otherwise, shall be the second charge upon such assets;

(c) The payment of any amount due to the government of any of the provinces, in trust or otherwise, shall be the third charge upon such assets; and

(d) the amount of any penalties for which the bank is liable shall not form a charge upon the assets of the bank, until all other liabilities are paid. 53 V., c. 31, s. 53.

OFFENCES AND PENALTIES.

THE COMMENCEMENT OF BUSINESS.

132. Commencing Business without Certificate—Offence.—

Every director or provisional director of any bank and every other person, who, before the obtaining of the certificate from the Treasury Board, by this Act required, permitting the bank to issue notes or commence business, issues or authorizes the issue of any note of such bank, or transacts or authorizes the transaction of any business in connection with such bank, except such as is by this Act authorized to be transacted before the obtaining of such certificate, is guilty of an offence against this Act. 53 V., c. 31, s. 14.

See sec. 14. The penalty for an offence against this Act is provided for by sec., 157.

THE SALE AND TRANSFER OF SHARES.

133. If Contrary to Requirements—Offence.—Any person, whether principal, broker or agent, who wilfully sells or transfers or attempts to sell or transfer,—

(a) any share or shares of the capital stock of any bank by a false number; or

(b) any share or shares of which the person making such sale or transfer, or in whose name or on whose behalf the same is made, is not at the time of such sale or attempted sale, the registered owner; or,

(c) any share or shares, without the assent to such sale of the registered owner thereof;

is guilty of an offence against this Act. 53 V., c. 31, s. 37.

See sec. 45. The penalty for an offence against this Act is provided for by sec. 157.

THE CASH RESERVES.

134. Holding less than 40 Per Cent. in Dominion Notes.—

Every bank which at any time holds less than forty per centum of its cash reserves in Dominion notes shall incur a penalty of five hundred dollars for each such offence. 53 V., c. 31, s. 50.

See sec. 60. As to the procedure for enforcing the penalty, see sec. 158.

THE ISSUE AND CIRCULATION OF NOTES.

135. Excess of Circulation—Penalty.—If the total amount of the notes of the bank in circulation at any time exceeds the amount authorized by this Act, the bank shall,—

(a) if the amount of such excess is not over one thousand dollars, incur a penalty equal to the amount of such excess; or,

(b) if the amount of such excess is over one thousand dollars, and not over twenty thousand dollars, incur a penalty of one thousand dollars; or,

(c) if the amount of such excess is over twenty thousand dollars, and not over one hundred thousand dollars, incur a penalty of ten thousand dollars; or,

(d) if the amount of such excess is over one hundred thousand dollars, and not over two hundred thousand dollars, incur a penalty of fifty thousand dollars; or,

(e) if the amount of such excess is over two hundred thousand dollars, incur a penalty of one hundred thousand dollars. 53 V., c. 31, s. 51.

See sec. 61. As to procedure, see sec. 158.

136. Unauthorized Issue of Notes for Circulation.—Every person, except a bank to which this Act applies, who issues or re-issues, makes, draws, or endorses any bill, bond, note, cheque or other instrument, intended to circulate as money, or to be used as a substitute for money, for any amount whatsoever, shall incur a penalty of four hundred dollars.

2. Such penalty shall be recoverable with costs, in any court of competent jurisdiction, by any person who sues for the same;

3. A moiety of such penalty shall belong to the person suing for the same, and the other moiety to His Majesty for the public uses of Canada;

4. If any such instrument is made for the payment of a less sum than twenty dollars, and is payable either in form or in fact to the bearer thereof, or at sight, or on demand, or at less than thirty days thereafter, or is overdue, or is in any way calculated or designed for circulation, or as a substitute for money, the intention to pass the same as money shall be presumed, unless such instrument is,—

(a) a cheque on some chartered bank paid by the maker directly to his immediate creditor; or,

(b) a promissory note, bill of exchange, bond or other undertaking for the payment of money made or delivered by the maker thereof to his immediate creditor; and,

(c) not designed to circulate as money or as a substitute for money. 53 V., c. 31, s. 60.

The joint effect of this section and of the Dominion Notes Act is to reserve to the chartered banks and to the Government of Canada the exclusive privilege of issuing notes intended to circulate as money.

137. Defacement of Notes.—Penalty.—Every person who in any way defaces any Dominion or provincial note, or bank note, whether by writing, printing, drawing or stamping thereon, or by attaching or affixing thereto, anything in the nature or form of an advertisement, shall be liable to a penalty not exceeding twenty dollars. 53 V., c. 31, s. 61.

Cf. sec. 551 of the Criminal Code.

138. Issuing Notes during Period of Suspension.—(a) Every person who, being president, vice-president, director, general manager, manager, clerk or other officer of the bank, issues or re-issues, during any period of suspension of payment by the bank of its liabilities, any notes of the bank payable to bearer on demand, and intended for circulation, or authorizes or is concerned in any such issue or re-issue; and,

(b) **Or Without Authority of Treasury Board.**—If, after any such suspension, the bank resumes business without the consent in writing of the curator, hereinbefore provided for, every person who being president, vice-president, director, general manager, manager, clerk or other officer of the bank issues or re-issues, or authorizes or is concerned in the issue or re-issue of any such notes before being thereunto authorized by the Treasury Board;

(c) **And accepting Such Notes.**—Every person who accepts, receives or takes, or authorizes or is concerned in, the acceptance, receipt or taking of any such notes, knowing the same to have been so issued or re-issued, from the bank, or from such president, vice-president, director, general manager, manager, clerk or other officer of the bank, in payment or part payment, or as security for the payment of any amount due or owing to such person by the bank; is guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 63-64 V., c. 26, s. 10.

See sec. 61.

139. Pledging and Accepting of Notes.—Penalty.—Every person who, being the president, vice-president, director, general manager, manager, cashier, or other officer of the bank, pledges, assigns, or hypothecates or authorizes, or is concerned in the pledge, assignment or hypothecation of the notes of the bank; and,

(b) Every person who accepts, receives or takes, or authorizes or is concerned in the acceptance or receipt or taking of such notes as a pledge, assignment or hypothecation; shall be liable to a fine of not less than four hundred dollars and not more than two thousand dollars, or to imprisonment for not more than two years, or to both. 53 V., c. 31, s. 52.

See section 63.

140. Issuing Notes Fraudulently, or Knowingly Accepting.—(a) Every person who, being the president, vice-president, director, general manager, manager, cashier or other officer of a bank, with intent to defraud, issues or delivers, or authorizes or is concerned in the issue or delivery of notes of the bank intended for circulation and not then in circulation; and,

(b) Every person who, with knowledge of such intent, accepts, receives or takes, or authorizes, or is concerned in the acceptance, receipt or taking of such notes; shall be guilty of an indictable offence, and liable to imprisonment for a term not exceeding seven years, or to a fine not exceeding two thousand dollars, or to both. 53 V., c. 31, s. 52.

See sec. 63.

WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER SECURITIES.

141. Bank acquiring Warehouse Receipt or Bill of Lading except in Certain Cases.—Penalty.—If any bank, to secure the payment of any bill, note, debt or liability, acquires or holds,—

(a) any warehouse receipt or bill of lading; or.

(b) Any instrument such as is by this Act authorized to be taken by the bank to secure money lent,—

(i) to any wholesale purchaser, or shipper of or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers, or to any wholesale purchaser or shipper of or dealer in live or dead stock, and the products thereof, upon the security of such products, or of such live or dead stock, or the products thereof; or,

(ii) to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, upon the security of the goods, wares and merchandise manufactured by such person, or procured for such manufacture; such bank shall, unless,—

(a) Such bill, note, debt or liability is negotiated or contracted at the time of the acquisition by the bank of such warehouse receipt bill of lading or security; or

(b) Such bill, note, debt, or liability, is negotiated or contracted upon the written promise or agreement that such warehouse receipt, bill of lading or security would be given to the bank; or

(c) By the acquisition or holding by the bank of such warehouse receipt, bill of lading or security is otherwise authorized by this Act,

incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See secs. 86 to 90.

Sec. 76 forbids a bank to do certain things "except as authorized by this Act," and secs. 141, 142, 145 and 146 set out the prohibited acts subject to the exceptions created by the other provisions of the Act.

Clause (c) of sec. 141 protects a bank from liability to a penalty for doing an act which, although not authorized by secs. 86 to 90, is within the powers conferred by the enabling provisions of secs. 76 *et seq.*

142. Non-compliance with Requirements for Sale—Penalty—If any debt or liability to the bank is secured by,—

(a) Any warehouse receipt or bill of lading; or

(b) Any other security such as is mentioned in the last preceding section,

and is not paid at maturity, such bank shall, if it sells the goods, wares and merchandise or products covered by such warehouse receipt, bill of lading or security, under the power of sale conferred upon it by this Act, without complying with the provisions to which the exercise of such power of sale is, by this Act, made subject, incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79; 63-64 V., c. 26, s. 18.

See sec. 89, and cf. notes to sec. 141. As to procedure, see sec. 158.

143. Making False Statements in Receipt, etc.—Every person is guilty of an indictable offence and liable to imprisonment for a term not exceeding two years who wilfully makes any false statement,—

(a) in any warehouse receipt, or bill of lading given under the authority of this Act to any bank; or

(b) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any wholesale purchaser or shipper of, or dealer in products of agriculture, the forest, quarry and mine, or the sea, lakes and rivers

or to any wholesale purchaser, or shipper of, or dealer in live or dead stock and the products thereof, whereby any such product or stock is assigned or transferred to the bank as security for the payment of such loan; or

(c) in any instrument given to any bank under the authority of this Act, as security for any loan of money made by the bank to any person engaged in business as a wholesale manufacturer of any goods, wares and merchandise, whereby any of the goods, wares and merchandise manufactured by him, or procured for such manufacture, are transferred or assigned to the bank as security for the payment of such loan. 53 V., c. 31, s. 75.

The documents mentioned in clause (a) are those upon the security of which a bank may lend money under sec. 86. Clauses (b) and (c) refer to documents which may be taken as security under sec. 88.

Cf. Criminal Code, secs. 425 and 427 (a).

144. Wilfully disposing of or withholding Goods covered by Security—Penalty.—Every person who, having possession or control of any goods, wares and merchandise covered by any warehouse receipt or bill of lading, or by any such security as in the last preceding section mentioned, and having knowledge of such receipt, bill of lading or security, without the consent of the bank in writing, and before the advance, bill, note, debt or liability thereby secured has been fully paid,—

(a) wilfully alienates or parts with any such goods, wares or merchandise; or,

(b) wilfully withholds from the bank possession of any such goods, wares and merchandise, upon demand, after default in payment of such advance, bill, note, debt or liability; is guilty of an indictable offence, and liable to imprisonment for a term not exceeding two years. 53 V., c. 31, s. 75; 63-64 V., c. 26, s. 5. 18.

Cf. Crim. Code, secs. 426, 427 (b).

145. Bank not selling Shares subject to Privileged Lien.—

(a) If any bank having, by virtue of the provisions of this Act, a privileged lien for any debt or liability for any debt to the bank, on the shares of its own capital stock of the debtor or person liable, neglects to sell such shares within twelve months after such debt or liability has accrued and become payable; or,

(b) If any such bank sells any such shares without giving notice to the holder thereof of the intention of the bank to sell the same, by mailing such notice to the post-office, post paid, to the last known address of such holder, at least thirty days prior to such sale, such bank shall incur for every such offence a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See sec. 77, and cf. notes to sec. 141. As to procedure, see sec. 158.

PROHIBITED BUSINESS.

146. Bank doing.—If any bank, except as authorized by this Act, either directly or indirectly,—

(a) deals in the buying or selling or bartering of goods, wares and merchandise, or engages or is engaged in any trade or business whatsoever; or

(b) purchases, deals in or lends money or makes advances upon the security or pledge of any share of its own capital stock, or of the capital stock of any bank, or

(c) lends money or makes advances upon the security, mortgage or hypothecation of any lands, tenements or immovable property or of any ships or other vessels, or upon the security of any goods, wares and merchandise;

such bank shall incur a penalty not exceeding five hundred dollars. 53 V., c. 31, s. 79.

See sec. 76, and cf. notes to sec. 141. As to procedure, see sec. 158.

147. Bank not making Monthly Returns.—Every bank which neglects to make up and send to the Minister, within the first fifteen days of any month, any monthly return by this Act required to be made up and sent in within the said fifteen days, exhibiting the condition of the bank on the last juridical day of the month last preceding, and signed in the manner and by the persons by this Act, required shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. 53 V., c. 31, s. 85.

See secs. 112 and 152. As to procedure see sec. 158.

147a. Penalty for not making Return of Additional Issue of Notes.—Every bank which neglects to make and send to the Minister, within the first fifteen days of the month next thereafter, a return showing the amount of its notes in circulation for each juridical day during any month in the usual season of moving the crops, that is to say, from and including the first day of October in any year to and including the thirty-first day of January next ensuing, in which any amount of its notes in excess of the amount of the unimpaired paid-up capital of the bank has been issued or is outstanding, and signed in the manner and by the persons by this Act required, shall incur a penalty of fifty dollars for each and every day, after the expiration of such time, during which the bank neglects to make and send in such return. (Added by 1908, c. 7, s. 2.)

See sec. 61. As to procedure, see sec. 158.

148. Not making Returns required by Minister.—Every bank which neglects to make and send to the Minister, within thirty days from the date of the demand therefor by the Minister, or if such time is extended by the Minister, within such extended time, not exceeding thirty days, as the Minister may allow, and special return, signed in the manner and by the persons by this Act required, which, under the provisions of this Act, the Minister may, for the purpose of affording a full and complete knowledge of the condition of the bank, call for, shall incur a penalty of five hundred dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 86.

See secs. 113 and 152. As to procedure, see sec. 158.

149. Bank not making Annual Returns as to Drafts, etc.—Every bank which neglects to transmit or deliver to the Minister, within twenty days from the close of any calendar year, a return, signed in the manner and by the persons and setting forth the particulars by this Act required in that behalf, of all drafts or bills of exchange issued by the bank to any person and remaining unpaid for more than five years prior to the date of such return, shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 63-64 V., c. 26, s. 21.

See secs. 114 and 152.

As to procedure, see sec. 158.

150. Not returning Annual List of Shareholders, etc.—

Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a certified list, as by this Act required, showing,—

(a) the names of the shareholders of the bank on the last day of such calendar year, with their additions and residences;

(b) the number of shares then held by such shareholders respectively; and,

(c) the value at par of such shares;

shall incur a penalty of fifty dollars for each and every day during which such neglect continues. 53 V., c. 31, s. 87.

See secs. 114 and 152. As to procedure, see sec. 158.

151. Not making Annual Return of Dividends and Balances.—

Every bank which neglects to transmit or deliver to the Minister, within twenty days after the close of any calendar year, a return, signed in the manner and by the persons by this Act required, of all dividends which have remained unpaid for more than five years, and also of all amounts or balances in respect of which no transactions have taken place, or upon which no interest has been paid, during the five years prior to the date of such return, and setting forth such further particulars as are by this Act required in that behalf, shall incur a penalty of fifty dollars for each and every day during which such neglect continues.

2. **Period of 5 years.**—The said term of five years shall, in case of moneys deposited for a fixed period, be reckoned from the date of the termination of such fixed period. 53 V., c. 31, s. 88.

See secs. 114 and 152. As to procedure, see sec. 158.

152. Date of posting of Return, or List.—If any return or list, mentioned in either of the last five preceding sections, is transmitted by post, the date appearing, by the post-office stamp or mark upon the envelope or wrapper enclosing the return or list received by the Minister, as the date of deposit in the post-office of the place at which the chief office of the bank was situated, shall be taken *prima facie*, for the purpose of any of the said sections, to be the day upon which such return or list was transmitted to the Minister. 53 V., c. 31, ss. 85 and 86; 63-64 V., c. 26, s. 22.

153. Making False Statement in Account, Return, etc.—

The making of any wilfully false or deceptive statement in any account, statement, return, report or other document respecting the affairs of the bank is an indictable offence, punishable, unless a greater punishment is in any case by law prescribed therefor, by imprisonment for a term not exceeding five years.

2. Every president, vice-president, director, auditor, manager, cashier or other officer of the bank, who,—

(a) prepares, signs, approves or concurs in any such account, statement, return, report or document containing such false or deceptive statement; or,

(b) uses the same with intent to deceive or mislead any person;—shall be held to have wilfully made such false or deceptive statement, and shall further be responsible for all damages sustained by any person in consequence thereof. 3 V., c. 31, s. 99.

For a full discussion of this section, see Falconbridge on Banking and Bills of Exchange, p. 271.

(1) *Drake vs. Bank of Toronto*, 9 Grant's Ch. R. 116 (1862).

Semble: The directors and managers of incorporated banks are *quasi* trustees for the general body of shareholders, and, if any loss

should accrue to the bank by their infringing the statute against usury, they would be liable individually to make good the loss to the bank.

(2) In the case of *The Queen vs. Cotte*, 22 L. C. J. 141 (1877), the cashier of La Banque Jacques Cartier was indicted for having unlawfully and wilfully made a wilful, false and deceptive statement in a return respecting the affairs of the bank, and was found guilty. On an appeal to the Court of Queen's Bench for the Province of Quebec, that Court, on the 19th March, 1877, maintained the verdict and held that it is not necessary to allege that the return referred to was one required by law to be made by the accused, or that any use was made by him of such return, or to specify in what particulars the return was false. Nor is it necessary to allege in the indictment that the false statement was made with intent to deceive or mislead.

(3) *Rhodes vs. Starnes* 22 L. C. J. 113 (1878).

Reports made and accounts rendered by the directors in the course of their duty, though made and issued to the shareholders only, as to the state of affairs of the company, are considered the representations of the company not only to the shareholders, but to the public, if they are published and circulated by the authority of the directors or a general meeting.

Directors of a company are personally liable for injury caused to third parties by false representations contained in a report of the directors to the shareholders, but the injury must be immediate and not the remote consequence of the representation, and it must appear that the false representation was made with the intent that it should be acted upon by such third persons.

A shareholder cannot claim damages against directors for having been induced to purchase shares by misrepresentation, if he has continued to hold them without objection long after he had knowledge, or full means of knowledge, of the untruth of the representations on which he bought them.

(4) In the case of *Regina vs. Sir Francis Hincks*, 24 L. C. J. 116 (1879), the defendant, the president of the Consolidated Bank of Canada, was indicted for making a wilfully false and deceptive return under 34 Vict., chap. 5, section 62, relating to banks and banking, the falsity of the return consisting in the improper classification of the assets and liabilities, and was tried and convicted on the 20th October, 1879. On an appeal to the Court of Queen's Bench for the Province of Quebec, the verdict was quashed and set aside, the court holding that the question as to whether the items: 1st, Sums borrowed by the defendant's bank from other banks, for which deposit receipts were given, classed as "other deposits payable after notice or at a fixed day;" 2nd, Demand notes classed as "bills and notes discounted and current," had been improperly classified was a question of fact for the jury, and not one of law for the court.

(5) In the case of *Molleur vs. Loupret*, L. N. 305 (1885) It was held in the Superior Court for the District of Iberville, Quebec, that the information in the case of making a false return under the Banking Act, 34 Vict., chap. 5, section 62, may be sworn to by a non-shareholder, and even by a citizen who is a debtor of the bank.

(6) *Macdonald vs. Bulmer, et al.*, R. J. Q., 12 S. C. 424 (1897).

The recourse of a drawer and depositor of the bank against the directors of the bank for damages caused by their bad administration being based on the responsibility which the directors have assumed as mandataries, and not on a *delit*, is prescribed by thirty years.

(7) *Rex v. Lovitt*, 1907, 2 East. L. R. 384, was a case reserved after the conviction of the president of the Yarmouth Bank for making a false and deceptive statement under sec. 99 of the Act of 1890. The false statement alleged was that certain items which were classed in a monthly return to the government as "current loans" ought to have been included under the head of "overdue debts." The Supreme Court of Nova Scotia set aside the verdict. Weatherbe, C. J., reviewed the evidence and came to the conclusion that there was no evidence that the persons who actually prepared the return in question did so with a fraudulent design or that the classification was wilfully false, and that in any case the president, who had no knowledge of the fraud or falsity, was not liable. Another member of the court came to the same conclusion as the Chief Justice, and two other members concurred in setting aside the verdict for reasons which are not relevant to the subject *under discussion*.

In *Rex v. Cockburn*, a case tried before the Police Magistrate for the City of Toronto, judgment was delivered at the close of the case on the 4th of February, 1907. The magistrate found as a fact that the defendant, the president of the Ontario Bank, had no knowledge of the falsity of the returns he signed, and held, as a matter of law, that such knowledge was an essential element of the crime. The only authority cited by the magistrate was the charge to the jury made by Longley, J., in *Rox v. Lovitt*.

CALLS IN THE CASE OF SUSPENSION OF PAYMENT.

154. Director refusing to make.—(a) If any suspension of payment in full, in specie or Dominion notes, of all or any of the notes or other liabilities of the bank, continues for three months after the expiration of the time which, under the provisions of this Act, would constitute the bank insolvent; and,

(b) if no proceedings are taken under any Act for the winding up of the bank; and,

(c) if any director of the bank refuses to make or enforce, or to concur in the making or enforcing of any call on the shareholders of the bank, to any amount which the directors deem necessary to pay all the debts and liabilities of the bank;

such director shall be guilty of an indictable offence, and liable,—

(a) to imprisonment for any term not exceeding two years; and,

(b) personally for any damages suffered by any such default.

53 V., c. 21, s. 92.

See sec. 128.

UNDUE PREFERENCE TO THE BANK'S CREDITORS.

155. President, etc., giving undue Preference to any Creditor.—Every person who, being the president, vice-president, director, manager, cashier or other officer of the bank, wilfully gives or concurs in giving to any creditor of the bank any fraudulent, undue or unfair preference over other creditors, by giving security to such creditor, or by changing the nature of his claim, or otherwise howsoever, is guilty of an indictable offence, and liable,—

(a) to imprisonment for a term not exceeding two years; and,

(b) for all damages sustained by any person in consequence of such preference. 53 V., c. 31, s. 97.

THE USING OF THE TITLE "BANK," ETC.

156. Unauthorized Use of Title.—Every person assuming or using the title of "bank," "banking company," "banking house," "banking association" or "banking institution," without being authorized so to do by this Act, or by some other Act in force in that behalf, is guilty of an offence against this Act. 53 V., c. 31, s. 100.

The section is designed to prevent persons doing business under any name which might mislead the public into the belief that it is doing business with a chartered bank.

Sec. 157 provides a penalty for "an offence against this Act."

As to the meaning of "bank" in the Act, see sec. 2.

PENALTY FOR OFFENCE AGAINST THIS ACT.

157. Offence against this Act.—Every person committing an offence, declared to be an offence against this Act, shall be liable to a fine not exceeding one thousand dollars, or to imprisonment for a term not exceeding five years, or to both, in the discretion of the court before which the conviction is had. 53 V., c. 31, s. 101.

See secs 132, 133 and 156, each of which creates "an offence against this Act."

PROCEDURE.

158. Penalties enforceable at Suit of Attorney General of Canada.—The amount of all penalties imposed upon a bank for any violation of this Act shall be recoverable and enforceable, with costs, at the suit of His Majesty instituted by the Attorney General of Canada, or by the Minister.

2. Appropriation.—Proviso—Such penalties shall belong to the Crown for the public uses of Canada: Provided that the Governor in Council, on the report of the Treasury Board, may direct that any portion of any penalty be remitted, or paid to any person, or applied in any manner deemed best adapted to attain the objects of this Act, and to secure the administration thereof. 53 V., c. 31, s. 98.

Secs. 134, 135, 141, 142, 145 to 151, impose penalties on the bank for violations of the Act. Cf. sec. 131 (d).

SCHEDULES TO THE BANK ACT.

The schedules are printed in the body of the Act as follows:

Schedule A, after sec. 4.

Schedule B, after sec. 9

Schedule C, after sec. 88, and

Schedule D, after sec. 112.

Index to Bank Act.

(The references are to the Sections of the Act).

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**BILLS OF EXCHANGE
CHEQUES and PROMISSORY
NOTES**

**BILLS OF EXCHANGE ACT
ANNOTATED**

BILLS OF EXCHANGE ACT.

The Bills of Exchange Act is a codifying Act, and the rule for its construction was thus stated by Lord Herschell in the case of *Bank of England v. Vagliano* (1891), A. C. at p. 144:

"I think the proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

"If a statute, intended to embody in a code a particular branch of law, is to be treated in this fashion, it appears to me its utility will be almost entirely destroyed, and the very object with which it was enacted will be frustrated. The purpose of such a statute surely was that on any point specifically dealt with by it, the law should be ascertained by interpreting the language used instead of, as before, by roaming over a vast number of authorities in order to discover what the law was, extracting it by a minute, critical examination of the prior decisions, dependent upon a knowledge of the exact effect even of an obsolete proceeding such as a demurrer to evidence. I am of course far from asserting that resort may never be had to the previous state of the law for the purpose of aiding in the construction of the provisions of the code. If, for example, a provision be of doubtful import, such resort would be perfectly legitimate. Or, again, if in a code of the law of negotiable instruments words be found which have previously acquired a technical meaning or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be put upon them in the code. I give these as examples merely; they, of course, do not exhaust the category. What, however, I am venturing to insist upon is, that the first step taken should be to interpret the language of the statute, and that an appeal to early decisions can only be justified on some special ground.

THE REVISED STATUTES OF CANADA, 1906.

CHAPTER 119.

AN ACT RELATING TO BILLS OF EXCHANGE, CHEQUES AND PROMISSORY NOTES.

SHORT TITLE.

1. Short title.—This Act may be cited as the Bills of Exchange Act. 53 V., c. 33, s. 1. Eng. s. 1.

This Act is a consolidation of the Bills of Exchange Act, 1890, and amending Acts. The Canadian Act is based on, but differs in some respects from the English Bills of Exchange Act, 1881, which was drafted by Chalmers. For historical introduction, see also Falconbridge on Banking and Bills of Exchange; chaps. 30 and 31.

INTERPRETATION.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "acceptance" means an acceptance completed by delivery or notification;

(b) "action" includes counter-claim and set off;

(c) "bank" means an incorporated bank or savings bank carrying on business in Canada;

(d) "bearer" means the person in possession of a bill or note which is payable to bearer;

(e) "bill" means bill of exchange, and "note" means promissory note;

(f) "delivery" means transfer of possession, actual or constructive, from one person to another;

(g) "holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof;

(h) "endorsement" means an endorsement completed by delivery.

(i) "issue" means the first delivery of a bill or note complete in form, to a person who takes it as a holder;

(j) "value" means valuable consideration;

(k) "defence" includes counter-claim;

(l) "non-business days" means days directed by this Act to be observed as legal holidays or non-judicial days.

2. Any day other than as aforesaid is a business day. 53 V., c. 33, ss. 2 and 91. Eng. ss. 2 and 92.

(a) **Acceptance.**—As to the operative definition and requisites of an acceptance, see secs. 35 *et seq.*

As to delivery or notification to complete a contract on a bill, see secs. 39, 40 and 41. Delivery is defined by clause (f).

(b) **Action.**—The word "action" is used in secs. 11, 49, 58, 93, 157 and 183. By clause (k) defence includes counter-claim.

Set off is of a different nature from counter-claim. A set off consists of a defence to the original claim of the plaintiff. A counter-claim is an assertion of a separate and independent demand which does not answer or destroy the original claim of the plaintiff.

(c) **Bank.**—Banking in Canada is carried on by the chartered banks, certain savings banks, and private bankers. A bank under the Act does not include a private banker. Savings banks are governed by R. S. C., cc. 30 and 32.

(d) **Bearer.**—As to when a bill or note is payable to bearer, see sec. 21. A bill payable to bearer is negotiated by delivery (sec. 60). The possessor of a bill or note payable to order is not technically the “bearer” of it, but “bearer” is included in “holder” as defined by clause (g).

(e) **Bill and Note.**—The operative definitions of these words are contained in secs. 17 and 176. A cheque is defined by sec. 165.

(f) **Delivery.**—Delivery is necessary to make any contract on a bill complete and irrevocable (sec. 39.) A person is said to have constructive possession of a thing when it is in the actual possession of his servant or agent on his behalf ; therefore delivery may be effected without change of actual possession in three cases, namely: (1) A bill is held by C. on his own account; he subsequently holds it as agent for D: (2) A bill is held by C.’s agent, who subsequently attorns to D. and holds it as his agent: (3) A bill is held by D. as agent for C; he subsequently holds it on his own account. Chalmers, p. 4.

(g) **Holder.**—Holder as here defined includes classes of persons who are holders in different senses:—

(1) The lawful holder or holder in due course (sec. 56). In this sense holder includes a person to whom a bill is by its terms payable and whose title is good against all the world; and also a person to whom a bill is by its terms payable, and who, as against third parties, is entitled to enforce payment thereof, though, as between himself and his transferor, he is a mere agent or bailee with a defeasible title, e.g., an endorsee for collection.

(2) An unlawful holder, that is, a person to whom a bill is by its terms payable, whose possession is unlawful (e.g., the finder of a bill endorsed in blank), but who nevertheless can give a valid discharge to a person paying it in good faith, and also a good title to a person who takes it before maturity in good faith and for value (sec. 74). An unlawful holder must be distinguished from a mere wrongful possessor, e.g., a person holding under a forged endorsement, or a person who has stolen a bill payable to the order of another (sec. 49.) A wrongful possessor has no title and gives none. Chalmers, p. 5.

Possession is an essential part of the definition. As to holder for value, see sec. 54. Bearer is defined by clause (d).

(h) **Endorsement.**—As to delivery, see clause (f).

As to the other requisites of an endorsement to operate as a negotiation, see secs. 62, et seq.

The word endorser primarily denotes the holder of a bill who endorses it, but it is also used to denote any person who signs a bill otherwise than as drawer or acceptor and thereby incurs the liabilities of an endorser to a holder in due course (sec. 131.) A person who signs a bill although not the holder of it is called under the foreign codes the giver of an “aval.”

The term endorsee is used to denote not only the person to whom a bill is specially endorsed, but also any person who makes title through an endorsement, e.g., the bearer of a bill endorsed in blank. Chalmers, p. 6. Cf. also notes to clause (g) *supra*, as to a holder for collection.

(i) **Issue.**—The term issue is used in secs. 28, 30 and 160. The “re-issue” of a bill is provided for by sec. 73. As to a “complete” bill: cf. secs. 31 and 56.

(j) **Value.**—The operative definition of valuable consideration is contained in section 53. See also secs. 54 to 58.

(k) **Defence.**—The word is used in secs 15 and 74. Cf. clause (b), *supra*.

(1) **Non-business Days.**—Sec. 43 provides that in all matters relating to bills, certain days and no others shall be observed as legal holidays or non-juridical days.

See secs. 6, 42, and notes to sec. 43.

PART I.

GENERAL.

3. Things done in Good Faith.—A thing is deemed to be done in good faith, within the meaning of this Act, where it is in fact done honestly whether it is done negligently or not. 53 V., c. 33, s. 89. Eng. s. 90.

The expression "in good faith" is used in secs. 56, 139, 172 and 175.

Negligence or carelessness on the part of the holder of a bill is not of itself sufficient to deprive him of his remedies for procuring its payment (*Jones v. Gordon* 1877), 2 App. Cas., H. L. 629; but negligence or carelessness when considered in connection with the surrounding circumstances may be evidence of bad faith: *Re Gomer-sall* (1875), 1 Ch. D. 146. Every case must be determined on its own merits. Cf. *Tatam v. Haslar*, 1889, 23 Q. B. D., at p. 348.

In *Allorey v. Hrabí*, 14 Man. R. 627, the evidence did not clearly show that the promissory notes sued on had been signed by the defendants, and it was proved that, if they had signed them, they did so without knowing that they were promissory notes and in the belief, induced by the false representations of the agent of the payee, that the documents they signed were petitions to the Government for a road:—*Held*, following *Foster v. McKinnon* (1869), L.R. 4 C.P. 704, and *Lewis v. Clay* (1897), 77 L.T., 653, that, notwithstanding the language of secs. 56 and 74 (b.) of the Bills of Exchange Act, 1890, the defendants were not liable to the plaintiffs, although they were holders in good faith, for value and without notice of any defect or fraud and had acquired the notes during their currency.

4. Signature.—Where, by this Act, any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority: 53 V., c. 33, s. 90. Eng. s. 91.

Sec. 131 provides that no person is liable as drawer, endorser, or acceptor of a bill who has not signed it as such. Cf. secs. 17, 36, 62, 63, 132, 151 and 176.

By or under his Authority.—Subject to the provisions of the Act, a forged or unauthorized signature is wholly inoperative, unless the party against whom it is sought to retain or enforce payment is precluded from setting up the forgery or want of authority (sec. 49). An unauthorized signature may become binding by ratification (see notes to sec. 49.)

A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signatures only if the agent in so signing was acting within the actual limits of his authority (sec. 51.)

A signature by an agent must be the principal's signature, or the agent's signature for or on his behalf; if the agent merely adds

words to his own signature describing himself as agent, he will be liable, and not the principal. Cf. sec. 52.

5. What required of Corporation.—In the case of a corporation, where, by this Act, any instrument or writing is required to be signed, it is sufficient if the instrument or writing is duly sealed with the corporate seal; but nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal. 53 V., c. 33, s. 90. Eng. s. 91.

By the law merchant an instrument under seal is not negotiable, but this section makes an exception in the case of bills and notes sealed with the corporate seal of a company.

The section deals only with the form of signature. It does not touch the question of capacity to contract; see secs. 47 and 48. Cf. R. S. C., c. 79, secs. 32, 115 and 160.

Similar provisions are also contained in several of the provincial Companies Acts. In every case of a bill or note signed by or on behalf of a company, it is necessary to consult the statute which is applicable in the particular instance.

In the case of a bank, see secs. 73 and 74 of the Bank Act, *supra*.

6. Computation of Time.—Where, by this Act, the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded. 53 V., c. 33, s. 91. Eng. s. 92.

Non-business days, as defined by sec. 2 (1) are the days directed by the Act to be observed as legal holidays or non-juridical days. What days are to be so observed is defined by sec. 43.

This section will be applicable to sec. 80 (acceptance), and sec. 94 (presentation to acceptor for honour. Cf. also secs. 97 and 103 (notice of dishonour.)

7. Crossing dividend Warrants.—The provisions of this Act as to crossed cheques shall apply to a warrant for payment of dividend. 53 V., c. 33, s. 94. Eng. s. 95.

8. The Bank Act not affected.—Nothing in this Act shall affect the provisions of the Bank Act. 53 V., c. 33, s. 95. Eng. s. 97.

See Bank Act, especially secs. 61 to 75, *supra*.

9. Imperial Acts, 15 Geo. III., c. 51, and 17 Geo. III., c. 30.—The Act of the Parliament of Great Britain passed in the fifteenth year of the reign of His Majesty George III., intituled "*An Act to restrain the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, and the Act of the said Parliament passed in the seventeenth year of His Majesty's reign, intituled "*An Act for further restraining the negotiation of Promissory Notes and Inland Bills of Exchange under a limited sum within that part of Great Britain called England*, shall not extend to or be in force in any province of Canada, nor shall the said Acts make void any bills, notes, drafts or orders made or uttered therein. 53 V., c. 33, s. 95."

The Act of 1890 repealed certain Dominion and provincial statutes then in force, but contained no provision, other than this section, expressly affecting any Imperial Statute. The statutes mentioned in this section are no longer in force in England.

10. Common Law of England.—The rules of the common law of England, including the law merchant, save in so far as they are inconsistent with the express provisions of this Act, shall apply to bills of exchange, promissory notes and cheques. 54-55 V., c. 17, s. 8. Eng. s. 97.

Sec. 10 has been added to meet cases not exhaustively dealt with by other sections.

The Act governs the form, issue, negotiation and discharge of bills, the manner in which persons become liable as parties thereto, etc. Sec. 10 has been added to meet cases not exhaustively dealt with by other sections. But matters of civil obligation resulting from the substance of the contracts entered into by parties to bills and the consequences of such contracts are as a rule governed, not by the common law of England or the law merchant, but by the appropriate provincial law. See *Guy v. Pare*, 1892, Q. R., 1, S. C. 443; *Noble v. Forgrave*, 1899, Q. R., 17 S. C. 234; *Cook v. Dodds*, 1903, 6 O. L. R. 608; *Falconbridge on Banking and Bills of Exchange*, pp. 357 *et seq.*; 28 C. L. T. and R. 812 *et seq.* The question of capacity is expressly referred by the Act to the appropriate law governing capacity to contract. See sec. 47.

11. Protest "Prima Facie" Evidence.—A protest of any bill or note within Canada and any copy thereof as copied by the notary or justice of the peace, shall, in any action be *prima facie* evidence of presentation and dishonor, and also of service of notice of such presentation and dishonor as stated in such protest or copy. 53 V., c. 33, s. 93.

12. Copy of Protest "prima facie" Evidence.—If a bill or note, presented for acceptance, or payable out of Canada, is protested for non-acceptance or non-payment, a notarial copy of the protest and of the notice of dishonour, and a notarial certificate of the service of such notice, shall be received in all courts as *prima facie* evidence of such protest, notice and service. 53 V., c. 33, s. 71.

13. Officer of the Bank not to Act as Notary.—No clerk, teller or agent of any bank shall act as a notary in the protesting of any bill or note payable at the bank or at any of the branches of the bank in which he is employed. 53 V., c. 33, s. 61.

14. Consideration, Purchase Money of Patent.—Every bill or note the consideration of which consists, in whole or in part of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, shall have written or printed prominently and legibly across the face thereof, before the same issued, the words *Given for a patent right*.

2. Without such words thereon, such instrument and any renewal thereof shall be void, except in the hands of a holder in due course without notice of such consideration. 53 V., c. 33, s. 30.

15. Transferee to take with Equities.—The endorsee or other transferee of any such instrument having the words aforesaid so printed or written thereon shall take the same subject to any defence or set-off in respect of the whole or any part thereof which would have existed between the original parties. 53 V., c. 33, s. 30.

By sec. 2, clause (b) set off is included in action, and by clause (k) defence includes counter-claim.

16. Transferring Defective Note—Indictable Offence—Penalty.—Every one who issues, sells or transfers, by endorsement or delivery, any such instrument not having the words *given for a patent right* printed or written in manner aforesaid across the face thereof, knowing the consideration of such instrument to have consisted, in whole or in part, of the purchase money of a patent right, or of a partial interest, limited geographically or otherwise, in a patent right, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding one year, or to such fine not exceeding two hundred dollars, as the court thinks fit. 53 V., c. 33, s. 30.

PART II.

BILLS OF EXCHANGE.

By sec. 165, except as otherwise provided in Part III., the provisions, of this Act applicable to a bill of exchange payable on demand apply to a cheque. Part III contains special provisions with regard to a cheque which is not presented for payment within a reasonable time, and the termination of a bank's duty and authority to pay a cheque, and also with regard to crossed cheques.

By sec. 186, subject to the provisions of Part IV, and except as provided by sec. 186, the provisions of the Act relating to bills of exchange apply, with the necessary modifications, to promissory notes. In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order. The following provisions as to bills do not apply to notes, namely: those relating to (a) presentment for acceptance; (b) acceptance; (c) acceptance *supra* protest; (d) bills in a set.

Form of Bill and Interpretation.

17. Bill of Exchange defined.—A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer.

2. Non-compliance with Requisites.—An instrument which does not comply with the requisites aforesaid, or which orders any act to be done in addition to the payment of money, is not, except as hereinafter provided, a bill of exchange.

3. Unconditional Order.—An order to pay out of a particular fund is not unconditional within the meaning of this section: Provided that an unqualified order to pay, coupled with,—

(a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount; or,

(b) a statement of the transaction which gives rise to the bill; is unconditional. 53 V., c. 33, s. 3. Eng. s. 3.

Bill of Exchange.—A bill is sometimes called a draft, and an accepted bill an acceptance. The person who gives the order is called the drawer. The person to whom it is addressed is called the drawee, and if he signifies his assent to the order (sec. 35), he is then called the acceptor. The person to whom the money is payable is called the payee or bearer (sec. 2), as the case may be. If he transfers the bill by indorsement (sec. 2), he is called the endorser (sec. 131); if by delivery only, he is called the transferor by delivery (sec. 137). The holder is defined by sec. 2.

Permissive.—A Bill of Exchange may be written in pencil, *Geary v. Physic*, 5 B. and C. 238 (1826), and drawn in any language, *Marseilles Co.*, 30 Ch. D. 598 (1885). No special form of words is essential, *Ellison v. Collingridge*, 9 C. B. 570 (1850), provided the foregoing statutory definition is complied with. Where an instrument is so ambiguously worded that it is doubtful whether it was intended for a bill or note, the holder may treat it at his option as

either: *Edis v. Bury*, 6 B. and C. 433 (1827). Also in the cases mentioned in section 26.

Essential.—(1) A bill is an "order." Its terms must be imperative, not precative, but the insertion of mere words of courtesy will not make it precative. Thus, an instrument running "Mr. B. will much oblige Mr. A. by paying to the order of C., etc.," was held good as a bill: *Ruff v. Webb*, 1 Esp. 129 (1794), but an instrument running "Please let bearer have £100 and you will much oblige me," was held not to be a bill: *Little v. Slackford*, 1 M. and M. 171 (1828).

(2) *The requisites of a Bill must appear on its face with reasonable certainty.*—Concerning the certainty required as to the drawee, see section 20; as to the payee, see section 21; as to the sum payable, see section 28 and as to the time when payable, see sections 23 and 24.

(3) *The Bill must be payable in money alone*, but it may be the money of any country: *Third National Bank v. Cosby*, 41 U. C. Q. B. 408 (1877). It must not order anything to be done in addition to the payment of money. (Story, section 87), therefore an order requiring payment of a certain sum "and to take up a note for the drawer" was held to be invalid as a bill. *Irvine v. Lowry*, 14 Peters (U.S.), 293 (1840). Money in Canada would be specie or Dominion Notes, see R.S.C., c. 30. But a bill may be payable in foreign money.

(4) *The order to pay must be unconditional.*—A bill drawn payable in the common form "as per advice" is unconditional (Story, section 152), but a bill payable so many days "after the arrival" of a certain ship is conditional and invalid, for the ship may never arrive: *Palmer v. Pratt*, 2 Bing. 185 (1824). As to the instruments payable on a contingency, see sections 24 and 176.

An order to pay "on the sale or produce when sold of the X Hotel" was declared invalid, *Hill v. Halford*, 2 B. and P. 413, Ex. Ch. (1801), as was also a cheque made conditional upon the obtaining of a certain contract: *Hakly v. Elliott*, 96 L. R. 185; but an order to pay a sum mentioned "which you will please charge to my account and credit according to a registered letter I have addressed to you" was held to be valid under the above sub-section: *Re Boyse*, 33 Ch. D. 612 (1886).

Although a bill may not be drawn conditionally, it may be accepted conditionally (section 38), endorsed conditionally (section 66), or as between immediate parties, or as regards a remote party other than a holder in due course delivered conditionally (section 40).

(5.) *The bill must be signed by the person giving it.*—The drawer may sign a blank paper, which may be subsequently filled up, section 31, or it may be accepted first and signed by the drawer afterwards, section 37; but even if accepted it is not a bill if it lack the drawer's signature: *Reg v. Harper*, 7 Q. B. D. 78 (1881). The drawer may sign on any part of the bill so long as he signs as drawer (*Byles*, p. 97). It has been held in France that, where a bill payable to drawer's order was endorsed by him, though he omitted to sign it on the face, this was sufficient (*Nougier*, section 199). The drawer may sign in pencil, or with a cross or mark; *Coupal v. Coupal*, 5 R. L. 465 (1873). Initials, a trade or assumed name, a stamp or a printed or engraved signature, are valid, where it is clear that the parties intended to adopt them as their signatures: *Ex parte Birmingham Banking Co.*, L. R. 3 Ch. 653 (1868). In the case of a Corporation the signature of any authorized agent, officer or servant would bind them, or the seal alone would be sufficient. The signature of a party need not be written with

his own hand. It is sufficient if it be by some other person by or under his authority, see section 4.

The Person to whom it is addressed.—The drawee must be named or otherwise indicated in a bill with reasonable certainty (sec. 20). A bill may be addressed to two or more drawees but not to two drawees in the alternative or to two or more drawees in succession (sec. 18).

On demand or at a Fixed or Determinable Future Time.—As to when a bill is payable on demand, see sec. 23.

As to when a bill is payable at a determinable future time, see sec. 24. A bill must not be expressed to be payable on a contingency (sec. 18).

A sum certain.—As to the meaning of a sum certain, see also sec. 28 (sum required to be paid with interest, by instalments, or according to an indicated or ascertainable rate of exchange.)

Sum Certain.—Instruments such as the following would be invalid as bills or notes, as not being for sums certain within the meaning of sec. 17, namely:—An order to pay C. "\$100 and all other sums which may be due to him." *Smith v. Nightingale* (1818), 2 Stark 375; or an order to pay C. "the proceeds of a shipment of goods, value \$2,000, consigned by me to you." *Jones v. Simpson* (1823), 2 B. & C. 318; or an order to pay C. "the balance due to me for building the Baptist College Chapel." *Crowfoot v. Gurney* (1832), 9 Bing, 372.

Specified Person or Bearer.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty: see sec. 21 and notes. See also sec. 19. As to bearer, see sec. 2 (d) and sec. 21.

Except as hereinafter provided.—These words were added to the Act in view of the provisions of sec. 28, sub-sec. 1, clause (d), but seem to be unnecessary for this purpose inasmuch as a sum payable as therein provided is still a "sum certain" within sec. 17.

The definition of a bill contemplates three parties to the instrument. Any two of them may, however, be the same person (secs. 19 and 26.) The drawee or payee may be fictitious (secs. 21 and 26). Words may be added prohibiting transfer (sec. 21). No time for payment need be expressed (sec. 23). Blanks in material particulars may be filled up (sec. 31), including the date (sec. 31).

Particular Fund.—An order to pay out of a particular fund is not a bill of exchange, but may be an equitable assignment: see notes to sec. 127.

18. Instrument Payable on Contingency.—An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect.

2. Addressed to two or more Drawees.—A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative, or to two or more drawees in succession, is not a bill of exchange. 53 V., c. 33, ss. 6 and 11. Eng. ss. 6 and 11.

Payable on a contingency.—A bill may be payable on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain; see sec. 24.

Two or more Drawees.—The acceptance of some one or more of the drawees, but not of all, is a qualified acceptance (sec. 28.)

A bill may not be addressed to two drawees in succession, or in the alternative, but it may name a drawee in case of need (sec. 32.) A bill may be made payable in the alternative (sec. 19.)

The acceptors of a bill can be liable only jointly, whereas the makers of a note may be liable jointly or jointly and severally according to its tenor (sec. 179).

19. Payer, Drawer or Drawee.—A bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

2. Two or more Payees.—A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some several payees.

3. Holder of Office, Payee.—A bill may be made payable to the holder of an office for the time being. 53 V., c. 33, ss. 5 and 7. Eng. ss. 5 and 7.

Payable to or to the order of.—Cf. secs. 21 and 22.

A bill payable to ".....order," which is indorsed by the drawer, is deemed to be payable to drawer's order: *Chamberlain v. Young* (1893), 2 Q. B. 206, C.A. A bill payable to the drawer's order may be treated either as a bill or note: *Golding v. Waterhouse*, 16 N.B. (3 Pugs.) 313 (1876). A bill payable to the order of the drawee cannot be enforced until the acceptor has indorsed it and delivered it to some other person; *Witte v. Williams*, 8 S. Car. 290 (1876).

When a bill is made payable in the alternative to one of two payees, it passes by the indorsement of either: *Spaulding v. Evans*, 2 McLean, 139 (1840).

The Payee.—The provisions of the Act relating to a payee apply, with the necessary modifications, to an endorsee under at special endorsement (sec. 67).

Payable to two or more Payees, etc.—The Act makes a material alteration in the law in allowing a bill to be made payable to persons in the alternative, unless there is apparent community of interest.

20. Drawee to be named.—The drawee must be named or otherwise indicated in a bill with reasonable certainty. 53 V., c. 33, s. 6. Eng. s. 6.

As to a fictitious drawee, see sec. 26.

As to filling up blanks, see sec. 31.

ILLUSTRATIONS.—(1) Instrument in the form of a bill, but addressed to no one. B. writes an acceptance thereon. This is not a bill, and B. is not liable as an acceptor. *Peto v. Reynolds* (1855), 11 Exch. 418, Ex. Ch., but he may be liable as the maker of a note: *Fielder v. Marshall* (1861), 30 L. J. C. P. 158.

(2) Instrument in the form of a bill payable to drawer's order, not containing the name of a drawee, but expressed to be payable "at No. 1 Union Street, London." B., who lives there, accepts it. This is a bill, and B. is liable as acceptor: *Gray v. Milner* (1819), 8 Taunt. 739.

21. Transfer Words.—When a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but it is not negotiable.

2. Negotiable Bill.—A negotiable bill may be payable either to order or to bearer.

3. When payable to Bearer.—A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an endorsement in blank.

4. Certainty of Payee.—Where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

5. Fictitious Payee.—Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer. 53 V., c. 33, ss. 7 and 8. Eng. ss. 7 and 8.

Payable either to order or Bearer.—As to when a bill is payable to order, see sec. 22.

Where a bill is negotiable in its origin, it continues to be negotiable until it has been, (a) respectively endorsed; or, (b) discharged by payment or otherwise (sec. 69).

A blank endorsement may be converted by any holder of the bill into a special endorsement (sec. 67).

Payee must be named or otherwise indicated with Reasonable Certainty.—A bill may be made payable to the holder of an office for the time being (sec. 19).

The payee need not be mentioned by name. It is sufficient that he be indicated so that he can be clearly identified. Extrinsic evidence is admissible to identify the payee when misnamed, or when designated by description only, but not to explain away an uncertainty patent on the bill: *Sagres v. Glyn* (1845), 8 Q. B. 24, Ex. Ch. Thus, if a bill is payable "to the order of the Treasurer of Portugal," evidence is admissible to show that C. was the treasurer when the bill was issued. Cf. *Holmes v. Jacques* (1836), L. R., 1 Q.B. 376; and if the bill is payable "to the order of J. Smythe," evidence is admissible to show that T. Smith is the person intended to be described thereby: *Willis v. Barrett* (1816), 2 Stark 29. But if a bill be drawn in the form "Pay.....or order," evidence is not admissible to show that C. was intended to be the payee: *R. v. Randall* (1811), R. & R. 195. In a New York case a note payable "to the order of the indorser" was held good as being payable to any holder who might indorse it: *United States v. White* (1841), 2 Hill, R. 59. By section 64, where the payee is wrongly designated or his name is mis-spelt, he may endorse the bill as therein described, adding, if he thinks fit, his proper signature. If the name of the payee be left in blank, the legal holder of the bill may fill up blank. *Bagley v. Ellison* (1890), 16 V. L. R. 263.

Payee a Fictitious or Non-existing Person.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill, or the existence of the payee and his capacity to endorse (sec. 129). This was the law before the Act, the law in this respect being based on the principle of estoppel. The genuineness of the endorsement of the payee was, however, a matter as to which, except in one special instance, no estoppel prevailed. This exception was that a bill drawn to the order of a fictitious or non-existing payee might be treated as payable to bearer, but the estoppel applied only against the parties who at the time they became liable on the bill were cognizant of the fictitious character or of the non-existence of the supposed payee.

Now by the Act, if the payee is a fictitious or non-existing person, the bill may be treated by all persons as payable to bearer. "Fictitious" means fictitious by the pretence of some party to the bill. So if the drawer really intends that payment shall be made to the payee, who is an existing person known to him, the bill may not be treated as payable to bearer, although the drawer has been induced by fraud to draw the bill and there is no real transaction between the drawer and the payee upon which the bill might be based and which would justify the payee in endorsing the bill. If, however, the drawer inserts a name as payee without intending to

represent any real person thereby, the bill may be treated by all persons as payable to bearer. So also if the signature of the drawer has been forged.

See *Bank of England v. Vagliano* (1891) A. C. 107; *Clutton v. Attenborough* (1897) A. C. 90; *London Life v. Molsons Bank*, 1904, 8 O. L. R. 238; *Vinden v. Hughes* (1905), 1 K. B. 795; *North and South Wales v. Macbeth* (1908) A. C. 137; *N. and S. W. Bank v. Irvine* (1908), A. C. 141; *Falconbridge*, pp. 375 *et seq.*

22. Bill payable to Order, when.—A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

2. When payable to Person or Order.—Where a bill, either originally or by endorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order, at his option. 53 V., c. 33, s. 8. Eng. s. 8.

If the acceptor of a bill payable to drawer or order when accepting it strikes out the words "or order" and writes over his acceptance the words "in favor of drawer only," the alteration is immaterial, and the negotiability of the bill is not affected: *Decroix v. Meyer* (1890), 25 Q. B. D. 343, C. A. affirmed (1891), A. C. 520, H. L. A *bon* made payable to a party therein named is negotiable though the words "or order" are omitted: *Desy v. Daly*, 3 Rev. de Jur. 492 (1897).

If a bill contains words prohibiting transfer or indicating an intention that it should not be transferable, it is valid as between the parties, but it is not negotiable (sec. 21).

Cf. secs. 68 and 69.

Sub-sec. 2 provides that a bill payable "to the order of C." is in legal effect the same as "to C. or order."

23. Payable on Demand when.—A bill is payable on demand,—

(a) which is expressed to be payable on demand or on presentations or—

(b) in which no time for payment is expressed:

2. Endorsed when overdue.—Where a bill is accepted or endorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any endorser who so endorses it, be deemed a bill payable on demand. 53 V., c. 33, s. 10. Eng. s. 10.

If a bill is not payable on demand, three days of grace are in every case, where the bill itself does not otherwise provide, added to the time of payment (sec. 42). The effect of the Act is that bills payable on presentation are demand drafts and are not entitled to days of grace, but that sight drafts, in accordance with the custom prevailing in this country prior to the Act, are entitled to days of grace. In England bills payable at sight as well as those payable on presentation are demand drafts and not entitled to days of grace.

A bill payable on demand is deemed to be overdue for the purposes of negotiation, when it appears on the face of it to have been in circulation for an unreasonable length of time (sec. 70). A demand bill must be presented for payment within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement in order to render the endorser liable (sec. 86). The provisions of the Act applicable to a bill payable on demand apply to a cheque except as otherwise provided, in Part III. (see sec. 165). As to presentment for payment

of a note payable on demand, see secs. 180 and 181. As to presentment for acceptance, see sec. 75.

A bill payable otherwise than on demand is overdue after the expiration of the last day of grace. As to the negotiation of an overdue bill, see sec. 70.

A bill may be accepted when it is overdue (sec. 37.)

24. Determinable Future Time—Sight—Specified Event.—A bill is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable,—

(a) at sight or at a fixed period after date or sight;

(b) on or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening is uncertain. 53 V., c. 33, s. 11; 54-55 V., c. 17, s. 1. Eng. s. 11.

Subject to the provisions of the Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time (sec. 77). Presentment of such a bill for acceptance is necessary in order to fix the maturity of the instrument (sec. 75.)

As to the due date of bills payable as described in this section, see secs. 44, 45 and 46. See also sec. 150 (acceptance for honour.)

When a bill is not payable on demand, it is duly presented for payment if presented on the day it falls due (sec. 86). Three days of grace, where the bill itself does not otherwise provide, are added to the time of payment as fixed by the bill, and the bill is due and payable on the last day of grace (sec. 42).

An instrument payable on a contingency is not a bill and the happening of the event does not cure the defect (sec. 18).

There is no limitation as to length of time. "If a bill of exchange be made payable at never so distant a day, if it be a day that must come, it is no objection to the bill." Per Willes, C. J., in *Colehan v. Cooke*, Willes 396.

See Section 44 (2) (3) as to fixing the due date of bills in ordinary cases, and section 150 as to the due date when accepted for honor. "After sight" in a bill means after acceptance or noting for protest for non-acceptance, *i.e.*, sight evidenced on the bill.

Among other things death has been held to be an event certain to happen, and bills and notes payable upon, or a specified time after the death of a person have been declared valid, *vide Cooke v. Colehan*, 3 Str. 1217 (1742); *Roffey v. Greenwell* (1839), 10 A. and E. 222; but notes payable "when I marry X," *Pearson v. Garrett* (1689), 4 Mod. 242, "when I am in good circumstances." *Ex parte Tootell* (1789), 4 Ves. 372, and "ninety days after the dissolution of partnership between C. and X., and the settling of the books," *Sackett v. Palmer* (1857), 25 New York R. 179, have been declared invalid. A bill, however, may be made payable at a particular fair or exhibition, though the day on which it will be held is not known: *Colehan v. Cooke*, *supra*.

25. Inland Bill defined.—An inland bill is a bill which is, or on the face of it purports to be,—

(a) both drawn and payable within Canada; or,

(b) drawn within Canada upon some person resident therein.

2. Others Bills.—Any other bill is a foreign bill.

3. Presumption.—Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. 63 V., c. 33, s. 4. Eng. s. 4.

A foreign bill if dishonoured must be duly protested (sec. 112) whereas, except in the Province of Quebec, it is not necessary to

note or protest an inland bill (sec. 113), notice of dishonour alone being sufficient.

Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers (sec. 187). See sec. 177 as to when a note is a foreign or an inland note.

"Unless the contrary appears on the face of the bill," i.e., unless something on the face of the bill indicates that it is a foreign bill, the holder may treat it as an inland bill, although it does not purport to be (a) both drawn and payable within Canada, or (b) drawn within Canada upon some person resident therein.

As to place of payment for purposes of presentment, if no place of payment is specified in the bill, see sec. 88. As to measure of damages when a bill is dishonoured abroad, see sec. 136. As to conflict of laws, see secs. 160 *et seq.*

26. Bill or Note—Option.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note. 53 V., c. 33, s. 5. Eng. s. 5.

Cf. sec. 21 as to fictitious payee.

As to incapacity to contract, see sec. 47, which provides that capacity to incur liability as a party to a bill is co-extensive with capacity to contract.

Presentment for acceptance is excused where the drawee is a fictitious person or a person not having capacity to contract by bill (sec. 79). Presentment for payment is dispensed with where the drawee is a fictitious person (sec. 92).

Notice of dishonour is dispensed with as regards the drawer where (a) the drawer and drawee are the same person; (b) the drawee is a fictitious person or a person not having capacity to contract (sec. 107). Notice of dishonour is dispensed with as regards the endorser, where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill (sec. 108).

27. Valid Bill—Not dated—Statement of Value—Statement of Place—Irregular Date.—A bill is not invalid by reason only,—

(a) that it is not dated;
(b) that it does not specify the value given, or that any value has been given therefor:

(c) that it does not specify the place where it is drawn or the place where it is payable:

(d) that it is antedated or postdated, or that it bears date on a Sunday or other non-juridical day. 53 V., c. 33, ss. 3 and 13 Eng. ss. 3 and 13.

A bill without a date is irregular, although not invalid; such a bill is presumed to be dated on the day of the delivery, *Giles v. Bourne*, 6 M. & S. 73. As to filling in the date in the case of an undated bill or acceptance, see sections 30 and 31. The alteration of the date is a material alteration, section 14 (6).

In the case of an accepted bill payable to drawer's order, the words "value received" mean value received by the acceptor: *Higmore v. Primrose*, 5 M. & S. 65 (1816); while, in a bill payable to a third party, they mean *prima facie* value received by the drawer: *Grant v. Da Costa* (1815), 3 M. and S. 351 (1815).

If no place of payment is specified the bill is payable generally. It may be payable at either of two places at the option of the holder. *Beeching v. Gower*, Holt N. P. C. 313 (1816). As to present-

ment for payment when no place of payment is specified and the address of the drawee is not given, see section 88. The addition of, or change in, a place of payment is a material alteration, section 146.

Time is computed on ante-dated or post-dated bills from the actual date they bear, and the fact that a cheque is post-dated does not make it irregular within the meaning of section 31 so as to charge the holder with equities of which he had no notice: *Hitchcock v. Edwards* (1889), 60 L. T. N. S. 636. To ante-date a deed in order to defraud a third party is a forgery; and the same principle would doubtless apply to bills and notes (Chalmers, p. 34). The death of one of the parties to a post-dated bill before the day of its date does not prevent title being derived through him on its being shewn that it was post-dated: *Passmore v. North* (1811), 13 East 517.

Sunday.—If a bill is given in pursuance of a contract declared by statute to be illegal as being made on a Sunday in the course of a man's ordinary calling, it would be void as between the immediate parties and as to any person who takes it with notice, but the mere fact of its being dated on a Sunday would not be such notice: *Crombie v. Operholtzer*, 11 U. C. Q. B. 55.

Sec. 27 declares that a bill is not invalid by reason only that it bears date on a Sunday. The Act does not say that a bill made on Sunday shall be valid. Such a bill would seem to be affected with illegality, except as against a holder in due course (sec. 58), if the consideration is a contract forbidden by statute to be made on Sunday.

28. Sum certain — Interest — Instalments — Default — Exchange.—The sum payable by a bill is a sum certain within the meaning of this Act, although it is required to be paid,—

- (a) with interest;
- (b) by stated instalments;
- (c) by stated instalments, with a provision that upon default in payment of any instalment the whole shall become due;
- (d) according to an indicated rate of exchange, or according to a rate of exchange to be ascertained as directed by the bill.

2. Figures and Words.—Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

3. With Interest.—Where a bill is expressed to be payable with interest, unless the instrument, otherwise provides, interest runs from the date of the bill, and if the bill is undated, from the issue thereof 53 V., c. 33, s. 9. Eng. s. 9.

A bill or a note must be for the payment of a "sum certain" (secs. 17 and 176).

An alteration of the sum payable is a material alteration (sec. 46.)

With interest.—A bill for £100 payable "with lawful interest" is valid. (*Warrington v. Early*, 1853, 2 E. & B. 763.)

The rate of interest in Canada, whenever any interest is payable by the agreement of parties or by law, and no rate is fixed by such agreement or by law, is five per centum per annum (R. S. C., c. 120, sec. 3). See also secs. 91 and 92 of the Bank Act.

See "issue" defined by section 2. Interest proper, payable by the instrument itself, must be distinguished from interest by way of damages, payable on its dishonor. As to the latter, see section 57.

If a wrong date is inserted in a bill which comes into the hands of a holder in due course he can collect interest from the date in-

serted, even if it be previous to the true date of issue. Sections 30 and 31.

Instalments.—The instalments may be either with or without interest. Each instalment is treated as a separate bill with regard to days of grace, presentment and notice of dishonor. A bill payable "by two equal instalments due 1st January and 1st July" is valid, *Gaskin v. Davis* (1860), 2 F. & F. 294; but a bill payable "by instalments," not specifying dates or amounts or payable "by equal instalments to cease on the death of X." would be invalid: *Moffat v. Edwards* (1841), Car. & M. 16; *Worley v. Harrison* (1835), 3 A. & E. 669.

Exchange.—Where a bill is to be paid in one country, and the sum is expressed in the currency of another, the amount is determined according to the rate of exchange on the day the bill is payable: *Hirschfield v. Smith*, L. R. 1 C. P. 340 (1866). A bill payable "at exchange as per last indorsement," or "according to the course of exchange upon Paris," would be valid: *Cf. Pollard v. Herries* (1803), 3 B. and P. 335. Cf. sec. 163.

The indorsement of a rate of exchange without authority is a material alteration which may avoid the bill: *Hirschfield v. Smith, supra*.

The rule in sub-section 2 is so binding that when the figures in the margin differ from the amount in words, evidence is inadmissible to show that the amount in figures is the correct one: *Saunderson v. Piper*, 5 Bing. N. C. 425; but when the words are not distinct, the figures in the margin may be looked at to explain them: *Beadsley v. Hill*, 61 Ill. 354 (1871).

29. True Date Presumption.—Where a bill or an acceptance, or any endorsement on a bill, is dated, the date shall, unless the contrary is proved, be deemed to be the true date of the drawing, acceptance or endorsement, as the case may be. 53 V., c. 33, s. 13. Eng. s. 13.

Parole evidence is admissible to show that the date on the bill is not the true date: *Biggs v. Piper*, 86 Tenn. 589 (1888).

If a bill be dated on an impossible day, such as the 31st September, the law adopts the nearest day by the doctrine of *cu pres*, and the computation will be from the 30th September: *Wagner v. Kenner*, 2 Robinson (La.) 120 (1842).

30. Undated Bill payable after Date—Inserting Wrong Date—Liability of Holder.—Where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at sight or at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: Provided that,—

(a) where the holder in good faith and by mistake inserts a wrong date; and,

(b) in every case where a wrong date is inserted: if the bill subsequently comes into the hands of a holder in due course the bill shall not be voided thereby, but shall operate and be payable as if the date so inserted had been the true date. 53 V., c. 33, s. 12; 54-55 V., c. 17, s. 2. Eng. s. 12.

See "issue" and "holder" defined by section 2, "good faith" by section 3, and "holder in due course" by section 56.

This presumption of authorization to insert true date of issue or acceptance is now extended, as regards the kind of bills named, to any payee or indorsee in possession of the bill and to the bearer.

See section 31 for the general rule as to material omission in a bill, and the consequences of supplying them, and section 146 as to material alterations.

Where the acceptance is not dated, the bill is presumed to have been accepted a few days after its date: *Roberts v. Bethell* (1852), 13 C. B. 778.

31. Perfecting Bill—Authority.—Where a simple signature on a blank paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount, using the signature for that of the drawer or acceptor, or an endorser; and, in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. 53 V., c. 33, s. 20. Eng. s. 20.

Sec. 30 provides for the special case where a bill payable after date is issued undated or an acceptance payable at sight or after sight is undated.

Every contract on a bill, whether it is the drawer's, the acceptor's, or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto (sec. 39; cf. secs. 40 and 41).

Delivery means transfer of possession, actual or constructive, from one person to another (sec. 2.)

The simple signature on a blank paper must be delivered by the signer in order that it may be converted into a bill, and a bill wanting in a material particular must be delivered within the meaning of the Act, before any authority is implied to complete the bill.

Sec. 31 is inapplicable to a document which has not been delivered *in order that it may be converted into a bill*. So if a person hands his agent a blank form of note signed by him, to be used by the agent in case he is instructed by the principal at some future time, the principal is not liable if the agent without authority fills in and negotiates the note. *Smith v. Prosser* (1907), 2 K. B. 735, distinguishing *Lloyd's Bank v. Cooke* (1907), 1 K. B. 794.

32. When to be Complete.—In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given; Provided, that if any such instrument, after completion, is negotiated to a holder in due course, it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

2. Reasonable Time.—Reasonable time within the meaning of this section is a question of fact. 53 V., c. 33, s. 20. Eng. s. 20.

• This section is supplementary to sec. 31.

The onus of proving the delivery of the blank paper by the signer in order that it might be converted into a bill or note is on the holder. Once it is proved that it was so delivered, the onus is shifted, and it is then for the signer to prove that it was not filled up within a reasonable time or in accordance with the authority given.

Extrinsic evidence of all the material circumstances is admissible to determine what is a reasonable time: *Hales & London & North Western Railway*, 4 B. & S. 66. It is for the party seeking to enforce the bill to account for the delay if it has been unusual, but when the signer seeks to escape liability on the ground that the authority given has been exceeded, the onus of proof is upon him as the holder has *prima facie* authority to fill it up as he sees fit.

Death revokes the authority to fill up a bill unless the holder be a holder for value.

The instrument so taken must have been originally delivered as a bill or delivered in an incomplete state in order that it might be converted into a bill. When a bill or note is written over a signature given for other purposes, the signer is not liable: *Ford v. Auger*, 18 L. C. J. 296; *Banque Jacques Cartier v. Lescard*, 13 Q. L. R. 39. If a bank acceptance is stolen from the signer and filled up, he is not liable to a holder in due course: *Baxendale v. Bennett*, 3 Q. B. D. 525. The liability of the signer begins when the bill is first issued complete in form, and not when he signs: *Ex parte Hayward* (1871), L. R. 6 Ch. 546.

An indorser of a note who signs before the maker or payee, and before the amount is filled up, is liable on the note as completed: *Rossin v. McCarthy*, 7 U. C. Q. B. 100 (1849).

33. Referee in Case of Need.—The drawer of a bill and any endorser may insert therein the name of a person, who shall be called the referee in case of need, to whom the holder may resort in case of need, that is to say, in case the bill is dishonoured by non-acceptance or non-payment.

2. **Option.**—It is in the option of the holder to resort to the referee in case of need or not, as he thinks fit. 53 V., c. 33, s. 15. Eng. s. 15.

A bill must be protested or noted for protest before it can be presented to the case of need (secs. 17 and 147, *et seq.*).

34. Stipulations—Limiting—Waiving Rights.—The drawer of a bill, and any endorser, may insert therein an express stipulation,—

(a) negating or limiting his own liability to the holder:

(b) waiving, as regards himself, some or all of the holder's duties. 53 V., c. 33, s. 16. Eng. s. 16.

Compare sections 66 and 68 as to conditional and restrictive indorsements. It has been held in the United States that an indorser without recourse is responsible to the same extent that a transferor by delivery is responsible, e.g., where the bill is a forgery. *Hannum v. Richardson* (1875), 21 Amer. R. 152. As to the ordinary liability of an indorser, see section 133, and as to the liability of a transferor by delivery, see section 137. As to indorsements or guarantees by parties who have never been holders, see section 131.

The provisions of this section are limited to the drawer or indorser. An acceptor may accept conditionally, see section 38, but he cannot accept so as to make himself secondarily, and not primarily, liable on the bill (Chalmers).

(b) Waiving, as regards himself, some or all of the holder's duties.

Chalmers gives the following illustration:—C., the holder of a bill indorses it to D., adding the words "notice of dishonor waived." No subsequent party is obliged to give notice of dishonor to C. Such an indorsement relates only to the indorser's liability, and does not otherwise affect the negotiation of the bill.

In the United States it has been held that an indorsement in the above form dispenses with the necessity of notice to all subsequent indorsers, *Parshley v. Heath* (1879), 31 Amer. R. 246 (Daniel, section 1090), but the English and Canadian Acts appear to contemplate the restriction of the waiver to the drawer or indorser who expressly waives any of the holders duties "as regards himself." (Chalmers).

ACCEPTANCE AND INTERPRETATION.

35. Acceptance defined.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

2. Drawee's Name wrong.—Where in a bill the drawee is wrongly designated or his name is misspelt, he may accept the bill as therein described, adding, if he thinks fit, his proper signature, or he may accept by his proper signature. 53 V., c. 33, s. 17. Eng. s. 17.

The sections of this Act which relate to acceptance do not apply to promissory notes; see sec. 186.

Acceptance is defined by secs. 35 and 36.

It may be general or qualified (sec. 38).

The time of acceptance is provided for by sec. 37.

As to acceptance *supra* protest, see sec. 147, and as to acceptance of bills in a set, see secs. 158 and 159.

The acceptance may be written on any part of the bill, provided it is clear that an acceptance was intended: *Young v. Glover*, 3 Jur. N. S. 637 (1857). It need not be dated, but it ought to be when the bill is at sight or so many days after sight. The drawee must accept upon presentment or at least within two days thereafter (sections 80 and 81). He may revoke his acceptance at any time before he delivers it or gives notice that he has accepted, but afterwards his act is irrevocable (section 39). His liability under the acceptance is set out in section 128. A promise to accept is not an acceptance and the acceptance to pay by another bill is invalid. *Russell v. Phillips*, 14 Q.B. 891. No person except the drawee or authorized agent can be liable as acceptor of a bill (*Steele v. McKinley*, 5 App. Cas. 770) save the referee in case of need (section 43) or the acceptor for honor (sec. 147). Where a bill is addressed to a firm, the signature of one of the partners or an agent binds the firm (section 131). If the partner signing adds also his own name, it is the acceptance of the firm and not of himself personally, re *Barnard, Edwards v. Barnard* (1886), 32 Ch. D. 447, C. A.; but if he accepts simply in his own name, he is personally liable and the firm is not bound: *Owen v. Von Oster* (1850), 10 C. B. 318. If a partner accepts in the firm's name a bill addressed to himself, the firm is not bound, but he is personally liable, as the firm name is merely a compendious form of expressing the individual names or signatures of all the partners: *Nicholls v. Diamond* (1853), 9 Exch. 154. An agent who signs a bill for his principal without authority, though not liable on the instrument, may be liable to the holder in an action for falsely representing that he had authority: *West London Bank v. Kitson* (1884), 13 Q.B. D. 360, C. A. A bill drawn on a Corporation should be addressed to the Company and not to its directors or officers, as it is frequently difficult to decide whether the drawee is the Company or the directors or officers individually. (See cases in Maclaren). A note or bill is deemed to have been made, accepted or indorsed on behalf of a Company if made, accepted or indorsed (a) in the name of the Company by any person acting under the authority of the Company, or (b) by or on behalf of or on account of the Company by any person acting under its authority. The accurate and full name of the Company is important. Where a Company is "limited," that word forms a part of its name, and any acceptance omitting this does not bind the Company: *Atkins v. Wardle*, 58 L. J. Q. B. 377 (1889).

36. Acceptance—On the Bill—For Money.—An acceptance is invalid unless it complies with the following conditions, namely:—

(a) It must be written on the bill and be signed by the drawee;

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

2. **Mere Signature.**—The mere signature of the drawee written on the bill without additional words is a sufficient acceptance. 53 V., c. 33, s. 17. Eng. s. 17.

Cf. notes to sec. 33.

37. Acceptance—Before Completion—Overdue.—A bill may be accepted,—

(a) before it has been signed by the drawer, or while otherwise incomplete;

(b) when it is overdue, or after it has been dishonoured by a previous refusal to accept, or by non-payment.

2. **Acceptance after dishonour.**—When a bill payable at sight or after sight is dishonoured by non-acceptance, and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance. 53 V., c. 33, s. 18; 54-55 V., c. 17, s. 3. Eng. s. 18.

The holder may treat a bill as dishonored by non-acceptance if it turns out that the drawee was incompetent to contract.

A bill accepted when overdue is payable on demand, section 23 (2). After a bill has been refused acceptance, and notice of dishonor has been given, the holder may apply to the referee in case of need if there be one named in the bill, section 34, or it may be accepted for honor by a third party, section 64; or the drawee may change his mind and accept. If he should do so the date from which time should run is fixed by the sub-section 2.

If the holder took an acceptance of a later date it would be a qualified acceptance, and he would do so at his own risk (Maclaren).

Unless the contrary appears by its terms, a bill of exchange is *prima facie* deemed to have been accepted before maturity and within a reasonable time after its issue, but there is no presumption as to the exact time of acceptance. For example: B. accepts, without dating, a bill drawn payable three months after date. He attains his majority the day before the bill matures. This is *prima facie* evidence that B. accepted it while an infant: *Roberts v. Bethell* (1852), 12 C. B. 778.

38. Kinds.—An acceptance is either,—

(a) general; or,

(b) qualified.

2. **General.**—A general acceptance assents without qualification to the order of the drawer.

3. **Qualified.**—A qualified acceptance in express terms varies the effect of the bill as drawn and in particular, an acceptance is qualified which is,—

(a) conditional, that is to say, which makes payment by the acceptor dependent on the fulfilment of a condition therein stated;

(b) partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(c) qualified as to time;

(d) the acceptance of some one or more of the drawees, but not of all.

4. **Specified Place.**—An acceptance to pay at a particular specified place is not on that account conditional or qualified. 53 V., c. 33, s. 19. Eng. s. 19.

If there are several drawees and they do not all accept, those who do are bound. A partner may accept in his own name a bill

addressed to his firm, and it is a valid acceptance for himself. *Owen v. Von Ilsten*, 1850, 10 C. B. 318.

By section 83, the holder may refuse to take a qualified acceptance. If he takes it, he must give notice to the drawer and indorsers, who may decline to be bound by it, but they must express their dissent within a reasonable time, or their acquiescence is presumed. If no notice is given, the drawer and indorsers are discharged, unless they have authorized the taking of the qualified acceptance.

Words importing a conditional or qualified acceptance will be construed most strongly against the restriction of the acceptor's liability, and to have effect must show in clear and unequivocal terms, on the face of the bill, that the acceptance is so qualified: *Smith v. Virtue*, 30 L. J. C. P. 60. Where a bill was payable to drawer's order and the acceptor struck out the words "or order" and wrote over his acceptance the words "in favor of the drawer only," it was held that the acceptance was not qualified and that an indorsee could sue the acceptor: *Meyer v. DeCroix* (1891), App. Cases 520. In *Fanshawe v. Peet* (1857), 26 L. J. Ex. 314, it was held that a mere memorandum, such as a wrong due date, introduced into the acceptance, contrary to the tenor of the bill, formed no part of the acceptance, and therefore did not make it qualified (Campbell's Ruling Cases, Vol. IV., Rules 8, 9 and 10). If the bill as drawn specified a particular place of payment, and the acceptance names a different one, this would be such a variance as would make the acceptance a qualified one: *Rowe v. Young*, 2 B. & B. 165 (1820).

Where the acceptance on a bill is unconditional, parole evidence cannot be received to show that it was accepted conditionally: *Bradbury v. Oliver*, 5 U. C. O. S. 703.

The following are examples of conditional acceptances:—

(1) "If a certain house shall be finished:" *Dufresne v. Jacques Cartier Building Society*, 5 R. L. 235 (1873).

(2) "When certain debentures are sold:" *Ontario Bank v. Mo-Arthur*, 5 Man. 381 (1889).

(3) "When certain debentures are sold:" *Russell v. Phillips*, 14 Q. B. 891.

As to partial acceptance, see further section 84.

The acceptor may vary the time of payment named by the bill, and if none be named he may fix a time, and he will be bound by it: *Russell v. Phillips*, *supra*.

39. When acceptance Complete—Proviso.—Every contract on a bill, whether it is the drawer's, the acceptor's or an endorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: Provided, that where an acceptance is written on a bill, and the drawee gives notice to, or according to the directions of, the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable. 53 V., c. 33, s. 21. Eng. s. 21.

His section and secs. 40 and 41 must be read together.

The following sections contain provisions relating to the different "contracts on a bill."

Secs. 130 to 133: drawer or endorser;

Secs. 35, 38 and 128: acceptor.

Delivery means transfer of possession, actual or constructive, from one person to another: see sec. 2, sub-sec. 1 (f).

The acceptance must be in writing, but the notification may be either written or verbal.

Delivery is necessary also to render the contract of the maker or indorser of a promissory note complete and irrevocable. The mail-

ing of the bill to the party to whom it is addressed constitutes delivery: *Ex parte Cote* (1873), L. R. 9 Ch. 27.

If the indorser of a bill or note delivers it to his own agent, he can recover it; if to the agent of the indorsee, he cannot recover it. A delivery by mistake may be revoked by mutual consent: *Ex parte Cote, supra*.

DELIVERY.

40. Requisites—Authority—Conditional.—As between immediate parties, and as regards a remote party, other than a holder in due course, the delivery,—

(a) in order to be effectual must be made either by or under the authority of the party drawing, accepting or endorsing, as the case may be;

(b) may be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

2. Presumption.—If the bill is in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed. 53 V., c. 33, s. 21. Eng. s. 21.

41. Parting with Possession.—Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor or endorser, a valid and unconditional delivery by him is presumed until the contrary is proved. 53 V., c. 33, s. 21. Eng. s. 21.

"Holder in due course" is defined by sec. 56.

The contracts on a bill are contracts in writing, and, subject to the provisions of section 40, parole evidence is not admissible to vary the rights and obligations of the parties as appearing upon the face of the instrument, except to shew (1) that the date of the bill or note is not the true date, section 29, or (2) that the delivery is incomplete and conditional only, so that the contract is not operative, section 41, or (3) to impeach the consideration for the contract and prove its absence, failure or illegality: *Northfield v. Lawrence*, M. L. R., 7 S. C. 148 (1891); *Abrey v. Cruz*, L. R. 5 C. P. 37 (1869); or (4) to show that the contract has been discharged by payment, release or otherwise: *Hamilton v. Perry*, Q. R., 5 S. C. 76 (1894), *Smith v. Squires* (1901), 13 Man. R. 360; *Emerson v. Erwin*, 10 B. C. R. 101, but see section 142.

Where a bill has been delivered conditionally or for a special purpose only, and the person who has so received it violates his trust, the owner may recover the bill or its amount from such person or anyone who has taken it with notice: *Muttyloll Seal v. Dent*, 8 Moore P. C. 319 (1853).

A bill or note may be delivered conditionally, and upon the happening of the event or fulfillment of the condition, no further delivery is necessary. What was before a mere paper writing becomes a valid bill. The death of the parties liable does not prevent the bill taking effect: *Giddings v. Giddings*, 51 Vt. 227 (1878).

As between immediate parties, a contemporaneous agreement, *Cf. Brown v. Langley* (1842), 4 M. & Gr. 466, or a subsequent written agreement, *McManus v. Bark* (1870), L. R. 5 Ex. 65, but not an oral agreement, *New London Credit Syndicate, L.D. v. Neale*, C. A. (1898), 2 Q. B. 487, may control the effect of a bill, subject to same conditions as would be requisite in an ordinary contract; but the mere fact that a bill refers to a collateral writing or agreement which is conditional in its terms will not vitiate the bill in the hands of a

person who has no notice of its contents: *Lindley v. Lacey* (1864), 34 L. J. C. P. 9. (See English and American cases reviewed, *Taylor v. Curry* [1871], 109 Massachusetts 36).

COMPUTATION OF TIME, NON-JURIDICAL DAYS AND DAYS OF GRACE.

42. Computation of Time—Last Day of Grace.—Where a bill is not payable on demand, three days, called days of grace, are, in every case, where the bill itself does not otherwise provide, added to the time of payment as fixed by the bill. and the bill is due and payable on the last day of grace: Provided that whenever the last day of grace falls on a legal holiday or non-juridical day in the province where any such bill is payable, then the day next following, not being a legal holiday or non-juridical day in such province, shall be the last day of grace. 53 V., c. 33, s. 14. Eng. s. 14.

Under the Act non-business days are the same as legal holidays or non-juridical days (sec. 2), and are the days mentioned in sec. 43.

Payable on Demand.—As to when a bill is payable on demand, see sec. 23. In Canada sight bills are not payable on demand and are entitled to days of grace.

This section applies only to bills payable in Canada. Those payable elsewhere are governed as to their due date by the law of the place where they are payable. Section 160, ss. 2 (e.)

Where a bill is payable by instalments, days of grace are allowed on each instalment: *Oridge v. Sherborne*, 11 M. & W. 374 (1843).

Non-negotiable notes not payable on demand are entitled to days of grace: *Smith v. Kendall*, 6 T. R. 123 (1794).

Notice of Dishonour and Action.—Notice of dishonour may be given at any time on the third day of grace immediately upon payment being refused by the acceptor (sec. 98), but action cannot be brought on a bill until the following day. See notes to sec. 95.

43. Non-Juridical Days.—In all matters relating to bills of exchange, the following and no other shall be observed as legal holidays or non-juridical days:

(a.) **General.**—In all the Provinces of Canada:

Sundays ;
New Year's Day ;
Good Friday ;
Easter Monday ;
Victoria Day ;
Dominion Day ;
Labour Day ;
Christmas Day ;

The birthday (or the day fixed by proclamation for the celebration of the birthday) of the reigning sovereign;

Any day appointed by proclamation for a public holiday, or for a general fast, or a general thanksgiving throughout Canada;

The day next following New Year's Day, Christmas Day, Victoria Day, Dominion Day, and the birthday of the reigning sovereign when such days respectively fall on Sunday;

(b) **Quebec.**—In the province of Quebec in addition to the said days:

The Epiphany,
The Ascension,
All Saints' Day,
Conception Day;

(c) **Provincial Proclamation.**—In any one of the provinces of Canada, any day appointed by proclamation of the Lieutenant Governor of such province for a public holiday, or for a fast or thanksgiving within the same, and any non-juridical day by virtue of a statute of such province. 53 V., c. 23, s. 14; 56 V., c. 30, s. 1; 57-58 V., c. 55, s. 2; 1 Ed. VII., c. 12, sec. 2 and 4. Cf. Eng. ss. 14 and 92. Cf. notes to sec. 42.

44. Time of Payment.—Where a bill is payable at sight, or at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by 'excluding the day from which the time is to begin to run and by including the day of payment. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

45. Sight Bill.—Where a bill is payable at sight or at a fixed period after sight, the time begins to run from the date of the acceptance if the bill is accepted, and from the date of noting or protest if the bill is noted or protested for non-acceptance, or for non-delivery. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

A bill is payable at sight. The acceptance bears date March 1st. The bill is due March 4th.

The date is presumed to be the true date unless the contrary be proved (sec. 29). As to omission of date see sec. 30. The proper date of an acceptance after a previous refusal to accept is the date of the first presentment (sec. 37). As to date or acceptance of a bill payable at sight or after sight, see sec. 80.

A bill payable after sight is noted for non-acceptance on January 1st. It is accepted *supra* protest on January 5th. The time of payment must be calculated from January 1st (sec. 150).

46. Due Date.—Every bill which is made payable at a month or months after date becomes due on the same numbered day of the month in which it is made payable as the day on which it is dated, unless there is no such day in the month in which it is made payable, in which case it becomes due on the last day of that month, with the addition, in all cases, of the days of grace.

2. Month.—The term "month" in a bill means the calendar month. 53 V., c. 33, s. 14. Cf. Eng. s. 14.

A bill dated 31st January payable "without grace" one month after date is due February 28th. A similar note dated January 1st is due February 1st.

Bills dated 28th, 29th and 30th November, respectively, payable three months after date, all fall due on March 3rd, except in a leap year, when the first note would fall due on March 2nd.

CAPACITY AND AUTHORITY OF PARTIES.

47. Capacity of Parties—Corporations.—Capacity to incur liability as a party to a bill is co-extensive with capacity to contract: Provided that nothing in this section shall enable a corporation to make itself liable as drawer, acceptor or endorser, of a bill, unless it is competent to it so to do under the law for the time being in force relating to such corporation. 53 V., c. 33, s. 22. Eng. s. 22.

See notes to sec. 48.

There is no special law of capacity applicable to parties to bills and notes. The rule laid down by this section refers the question of capacity to the general law of contracts in the province in which the transactions upon the bill take place. As to conflict of laws, see secs. 160 *et seq.*

48. Effect of Disability on Holder.—Where a bill is drawn or endorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto. 53 V., c. 33, s. 22. Eng. s. 22.

Questions of capacity are determined according to the laws in force in each Province, and, when these conflict, are governed in Quebec according to the law of the domicile of the contracting party (C. C. Art. 6). The law of the other provinces is not settled. In the United States the law of the place of the contract is generally followed (Story on Conflict of Laws, s. 102). In England capacity is perhaps determined according to the *lex domicilii* of the contracting party (Chalmers, p. 61, citing *Sottomayers v. De Barros* [1877], 3 P. D. 1, at p. 5; C. A. & Westlake, 3rd ed., p. 44).

Capacity to incur liability must be distinguished from (a) capacity to enforce rights; (b) capacity to transfer; and (c) capacity to contract on behalf of another, as a person who cannot himself be held liable may be able to bind others, or to make a legal transfer, or to act as agent when duly authorized.

The incapacity of one or more parties to a bill in no way diminishes the liability of the other parties thereto: *Cf. Grey v. Cooper* (1872), 3 Dougl. 65. Thus the acceptor cannot set up the incapacity of the drawer, section 128 (b.), the drawer cannot set up the incapacity of the acceptor or payee, nor can the indorser set up the incapacity of the drawer or a previous indorser (section 130).

The principal classes without full capacity to contract are:—

(a) *Natural incapables.*—Those persons who, from natural infirmity, are entirely incapable of efficiently looking after their own interests, viz.: idiots and lunatics.

(b) *Temporary incapables.*—This class includes minors, drunken persons and those whose mental faculties are impaired for the time being on account of age, accident or sickness.

(c) *Artificial incapables.*—Those persons who, though perfectly able to protect their own interests, are forbidden by some special law from entering into contracts. This class includes persons civilly dead, non-trading corporations and married women whose domicile is in the Province of Quebec.

Minors.—No person in Canada under the age of 21 years can incur liability on a bill of exchange or note except under the law of the Province of Quebec, which allows minors emancipated by marriage or by the Court to sign bills and notes in the performance of all acts of pure administration (C. C. Arts. 314-322), and minors engaged in trade or business to bind themselves by bills and notes relating to such trade or business (Art. 323), *City Bank v. Lafleur*, 20 L.C. J. 131, but a minor domiciled and engaged in business in Ontario cannot bind himself by a note payable in Quebec, the law of Ontario governing as to his capacity: *Jones v. Dickinson*, Q. R., 7 S. C. 313 (1895). A minor is not bound on a bill or note given by him for necessities, although he may be liable on the consideration: *Ex parte Marquette Re Soltykoff* (1891), 1 Q. B. 313, C. A., but the action cannot be taken on such consideration until after the due date of the note. If an adult person becomes acceptor of a bill, the mere fact that it was drawn and dated while he was under age will not be a good defence. Chalmers gives the following illustrations as to the liability of minors (p. 62):

(a) B., an infant, within three months of attaining his majority, accepts a bill payable six months after date. He ratifies the transaction on attaining the majority, and the bill is negotiated. B. is not liable on his acceptance: *Ex parte Kibble* (1875), L. R. 10 Ch. 373.

(b) B., after attaining his majority, accepts a bill to pay a debt contracted before his majority. The bill is indorsed to a holder in due course. The holder can sue B: *Belfast Banking Co. v. Doherty* (1870), 4 Ir. L. R. Q. B. D. 124.

(c) B., after attaining his majority, accepts a bill to compromise a joint liability on a bill which he accepted during his minority. He is not liable to a holder with notice: *Smith v. King* (1892), 2 Q. B. 543.

If an infant be a party, jointly with an adult, to a negotiable instrument, the owner may sue the adult alone, without taking notice of the infant: *Burgess v. Merrill*, 4 Taunt. 468.

Where an infant is partner in a firm, unless, on coming of age, he notifies the discontinuance of the partnership, he is liable for contracts made by the firm after his majority: *Good v. Harrison*, 5 B. & Ald. 147.

Rights of Minor as Holder of Bill.—A minor may transfer, or sue, on a bill which he holds, whether he is the drawer or not, for, though he is not bound, other parties may be bound to him.

Idiots, Lunatics, etc.—In Quebec persons interdicted for imbecillity, madness, insanity, prodigality or drunkenness, cannot bind themselves by bill or note (C. C. Art. 937). Bills and notes made by such persons when not interdicted are valid, but may be annulled if injurious to them, provided their condition was notorious or known to the other party at the same time of the execution of the instrument. (C. C. Arts. 334, 335).

In the other provinces of the Dominion the rule is that the contract of a lunatic or drunken man who, by reason of lunacy or drunkenness, is not capable of understanding the terms or forming a rational judgment of its effect upon his interest is not void but only voidable at his option, and this only if his state is known to the other party. Pollock on Contracts, p. 91 (adopted by MacLaren). See *Robertson v. Kelly*, 2 O. R. 163 (1883), *Imperial Loan Co. v. Stone*, 1 Q. B. 599 (1892); *Gore v. Gibson*, 13 M. & W. 623.

Married Women.—A married woman having separate property may by bill, note or otherwise bind the separate property which she has or may acquire in all respects as if she were *feme sole*, except in the Province of Quebec, where the general rule is that a wife cannot contract without the authorization of her husband (C. C. Arts. 176, 296 and 986), *Danziger v. Ritchie*, 8 L. C. J. 103 (1864); but in the case of a note such authorization is sufficiently proved by the indorsement of the husband, *Johnson v. Scott*, 3 L. N. 171 (1880), or by his signing a note as witness to the signature of his wife, *Kearney v. Gervais*, R. J. Q., 3 S. C. 496. If the married woman is separate as to property by marriage contract (C. C. Art. 1422), or if she be granted by the Court a separation from bed and board (C. C. Art. 210), or even a separation as to property only (C. C. Art. 177), she may administer her own property and give bills and notes when necessary for such administration. If she is a public trader she may bind herself without the authorization of her husband for all that relates to her commerce, *Beaubien v. Husson*, 12 L. C. R. 47 (1862), and (C. C. Art. 179); but in such a case even a holder in due course would have to clearly prove that the bill was for an obligation contracted in the course of her trade, *Banque Ville Marie v. Mayrand*, Q. R., 10 S. C. 460 (1897) as a bill made by a married woman without authorization is not "complete and regular on the face of it" and *caveat emptor*. A woman cannot bind her separate property in any contract with or for her husband otherwise than as being common as to property (C. C. Art. 1301), neither for his debt, *Thibaudreau v. Burke*, 20 R. L. 85 (1890), nor for his benefit, *Ricard v. Banque Nationale*, Q. R., 3 Q. B.

611 (1893), nor as a surety for him. *Martin v. Guyot*, M. L. R. 1 S. C. 181 (1885), nor together with him, *Leclerc v. Ouimet*, 19 R. L. 78 (1890). She cannot even endorse a note given by her husband for necessities for their common support. *Bruneau & Barnes*, 25 L. C. J. 245 (1880), but a note made by a wife separate as to property in favor of her husband and indorsed by him for necessities purchased by her is valid without proof of express authority to her to sign the same: *Cholet v. Duplessis*, 6 L. C. J. 81 (1862). A woman may incur a debt or become surety for a third person, with the authorization of her husband. The principles of Quebec law applying to the incapacity of married women to contract have always been held to be matters of public policy. (Girouard, p. 59.)

A woman who is divorced, or whose husband is civilly dead, has full power to contract.

Rights of Women as Holders of Bills and Notes.—If a married woman is the holder of a bill or note she may sue on it in her own name except in Quebec, where the husband alone can collect and sue upon it, if there be community of property (C. C. Art. 1298). If the wife is separate as to property, it forms part of her separate estate, but she cannot sue upon it without the authorization of her husband (C. C. Art. 176), nor can she validly pass the authority in a bill payable to her order without such authorization, except as against an acceptor, drawer or indorser, who is precluded from denying it under sections 128 and 130 (MacLaren). If the bill or note be given to a married woman, *marchande publique*, in the course of her trade, she may indorse it alone, but a suit for its recovery must be taken in her name, assisted by her husband (C. C. Art. 176).

Corporations.—Those corporations can become parties to notes and bills which are given special authority to do so by their charters or by the general laws by which they are governed. Also when it is absolutely necessary to enable them to carry on their business or attain the objects of their creation. In the case of a trading corporation the fact of incorporation for the purpose of trade would give capacity. In the case of non-trading corporations, the power must be expressly given, or there must be terms in the charter wide enough to include it (Chalmers, p. 64). The bill of a company lacking capacity is, as regards the company, incurably bad, for a contract *ultra vires* of a corporation cannot be ratified. The capacity of a company ceases when a resolution to wind it up has been passed.

Companies incorporated by Letters Patent of the Dominion or Provinces of Nova Scotia and British Columbia are required to add the word "limited" after the name on every bill, note or cheque, and if they fail to do so are liable to a penalty.

As to the form of bills of corporations, see sec. 5. Sec. 47 relates only to capacity. Cf. sec. 52.

Other Incapable Persons.—Persons civilly dead have no capacity to contract. These include persons in the Province of Quebec who take solemn and perpetual vows in a religious community recognized at the time of the cession of Canada to England, and subsequently approved (Art. 34 C. C.).

49. Forgery—Estoppel—Ratification—Recovery of Amount paid on a Forged Cheque.—Subject to the provisions of this Act, where a signature on a bill is forged, or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereon against any party thereto can be acquired through or under the signature, unless the party against whom it is sought

to retain or enforce payment of the bill is precluded from setting up the forgery or want of authority. Provided that,—

(a) nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery;

(b) if a cheque, payable to order, is paid by the drawee upon a forged endorsement out of the funds of the drawer, or is so paid and charged to his account, the drawer shall have no right of action against the drawee for the recovery back of the amount so paid, nor any defence to any claim made by the drawee for the amount so paid, as the case may be, unless he gives notice in writing of such forgery to the drawee within one year after he has acquired notice of such forgery:

2. Default of Notice.—In case of failure by the drawer to give such notice within the said period, such cheque shall be held to have been paid in due course as respects every other party there-to or named therein, who has not previously instituted proceedings for the protection of his rights. 53 V., c. 33, s. 24. Cf. Eng. ss. 24 and 60.

A bill held under a forged signature must be distinguished from a bill with genuine signatures which has been fraudulently altered (sec. 145), though such alteration may amount to the crime of forgery, and must also be distinguished from a bill, with genuine signatures, in which material omissions have been filled up (sec. 31).

Subject to the Provisions of this Act.—See sec. 50 as to recovery of amount paid on forged endorsement in good faith and in the ordinary course of business, sec. 173 as to protection of bank and drawer, and sec. 175 as to protection of collecting bank, where cheque is crossed. See also sec. 21 and notes as to fictitious or non-existing payee, and sec. 26 as to fictitious drawee.

Forgery is the making of a false document knowing it to be false, with the intention that he shall in any way be used or acted upon as genuine to the prejudice of any one, and any person committing this crime is liable to imprisonment for life. The following acts have been decided to amount to forgery if done with fraudulent intent:—

(1) The writing by one man the name of another; (2) writing the name of a fictitious person; (3) writing a man's own name with intent that it should pass for another's; (4) filling up a blank cheque with an unauthorized sum; (5) obliterating, adding to, or altering the crossing of any cheque; (6) altering a bill, note or cheque, whether by addition, subtraction, or substitution; (7) writing a bill or note over a genuine signature not given for that purpose. Where several join in a forgery, each forges the whole instrument. The following acts do not amount to forgery; (a) writing words amounting to a bill or note over the signature of another, purposely given; (b) drawing a bill upon a person with false addition or description to that person's name; and (c) writing another's name with or without the words "per procuration" under a mistaken belief of having authority.

A forgery cannot be ratified, *Merchants Bank v. Lucas*, 18 S. C. Can. 704, but a person whose signature has been forged may by his conduct be estopped from denying its genuineness to an innocent holder: *Union Bank v. Farnsworth*, 19 N. S. 82 (1882); *Scott v. Bank of New Brunswick*, 31 N. B. 21 (1891) as to when the fact of becoming a party is an estoppel from setting up that the signatures of other parties thereto are forged or unauthorized. See as to drawer, section 130 (1); maker of note, section 185 (b.); indorser, section 130 (2); acceptor, section 128; acceptor for honor, section 130; fictitious payee, section 21 (5); fictitious drawee, section 26.

A clerk in one of the departments of the Dominion Government forged several cheques upon the Bank account kept by the department with the defendants, in the manner set out in the judgment, and deposited the forged cheques to his own credit with other banks (third parties). The cheques went through the clearing house, and were paid by the defendants. The forgeries were not discovered for some months; the clerk who executed them was the person intrusted with the duty of checking the bank account and examining the pass-book. In an action on behalf of the Crown to recover the amount of the forged cheques, which had been charged by the defendants against the department's account, the defendants contended that the right to recover was barred by the omission or neglect by officers of the Government of duties which the ordinary customer owes to the bank.—Held, upon the evidence, that there was no negligence or carelessness on the part of the Crown officers in the circumstances preceding the forgeries which conduced to their commission. 2. That there is no contracted obligation on the part of the banker's customer to examine his pass-book; nor in this case was the passing of the book to and fro evidence of a stated and settled account, for the account was a "letter of credit" account, and the settlements between the Crown and the defendants were made by means of reimbursement cheques, pursuant to sec. 53 of the Audit Act, and the reimbursement cheques accepted by the defendant did not cover the forgeries. 3. But, if there was a breach of duty or negligence or omission, it would not avail the defendants, for the Crown is not bound by estoppel, nor responsible for the negligence or laches of its servants. 4. The claim of the defendants against the other banks with which the forged cheques were deposited was based upon liability as indorsers, or upon warranty or representation that the cheques were genuine, or upon payment and receipt of the proceeds of the forgeries under mistake of fact:—Held, upon the evidence, that the third party banks were not indorsers, and that there was no implication of warranty or representation upon which a claim for indemnity could be founded. 5. The rules as to notice established in regard to genuine bills and notes are inapplicable to the case of mere forgeries. 6. The defendants never were acceptors of any of the cheques within the meaning of sec. 128 of the Canadian Bills of Exchange Act. 7. A banker does not owe to the holder of a cheque the duty of knowing his customer's signature. *Imperial Bank of Canada v. Bank of Hamilton* (1903), A. C. 49, applied and followed. 8. But upon the ground of estoppel arising from the payment by the defendants of the forged cheques and the change in position of the third parties which ensued, the defendants were not entitled to recover against the third parties. 9. And apart from the estoppel, the rule that when one of the two innocent persons must suffer by the acts of a third, he who has enabled such third person to occasion the loss must sustain it, afforded the third parties a defence; for, though they had credited the forger's accounts with the amounts of the forged cheques before they were presented for payment, that mistake would have been innocuous to them, had it not been for the subsequent mistake of the defendants in honoring those cheques; and this act of the defendants was the proximate cause which enabled the forger to reap the benefit of his frauds.

Re v. Bank of Montreal, 10 O. L. 177, Anglin J.; affirmed, 11 O. L. R. 595, 38 S. C. R. 258.

In *Dominion Bank v. Ewing* 1904, 35 S. C. R. 133, the bank on

August 15th, 1900, by letter, informed the ostensible makers of a promissory note that it had that day discounted the note for the payees. The makers' name had been forged. They, however, did not reply or inform the bank of the forgery until December 10th, 1900, having in the meanwhile been corresponding with the forger, urging him to settle the matter. A large part of the proceeds of the discount was not paid out by the bank until after the time when they could have had notice from the defendants that the note was a forgery. *Held*:—That the defendants' silence, coupled with the resulting damage, estopped them from denying their signature, and that they were liable for the full amount of the note.

The principle of law that money paid under mistake of *fact* may be recovered regulates the dealings with forged instruments. If a person is induced to discount a bill by a signature which he afterwards discovers to be forged, whether he takes through the signature or independently of it, that is, whether he has a good title to the bill or not, he may at once recover the money from the person who brought the bill for discount. So, if such a bill was given for the price of goods or other consideration, the receiver might, on discovering the forgery, at once sue on the consideration.

Unless he gives Notice in Writing.—The effect of clause (b) of the proviso is that if a cheque payable to order is paid by the drawee upon a forged endorsement, there is a special period of limitation applicable to the claim or defence of the drawer against the drawee in respect of the payment made, namely one year after the drawer has acquired notice of the forgery. Until the year expires, the payment as between the drawer and drawee is invalid in accordance with the general rule that a forged endorsement is wholly inoperative. After the year, the drawer is concluded as against the drawee.

By sub-sec. 2 the same period of limitation is made applicable as respects every other party to the cheque or named therein who has not previously instituted proceedings for the protection of his rights.

50. Recovery of Amount paid on Forged Endorsement.—If a bill bearing a forged or unauthorized endorsement is paid in good faith and in the ordinary course of business, by or on behalf of the drawee or acceptor, the person by whom or on whose behalf such payment is made shall have the right to recover the amount so paid from the person to whom it was so paid or from any endorser who has endorsed the bill subsequently to the forged or unauthorized endorsement if notice of the endorsement being a forged or unauthorized endorsement is given to each such subsequent endorser within the time and in the manner in this section mentioned.

2. Rights over.—Any such person or endorser from whom said amount has been recovered shall have the like right of recovery against any prior endorser subsequent to the forged or unauthorized endorsement.

3. Notice of Forgery.—Such notice of the endorsement being a forged or unauthorized endorsement shall be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given or addressed under this Act. 60-61 V., c. 10, s. 1. dressed in the same way, as notice of protest or dishonour of a bill may be given or addressed under this Act. 60-61 V., c. 10, s. 1. Cf. Eng. s. 60.

Cf. notes to sec. 49.

Section 50 gives the right to recover back the amount paid

from the person to whom it was paid or from any endorser subsequent to the forged or unauthorized endorsement, but, it confers no right of recovery against an intermediate holder who may have transferred the bill, but who did not endorse it. The section requires notice of the forgery or want of authority to be given to each endorser subsequent to the endorsement in question, and not merely to the endorser sought to be charged. The notice must be given within a reasonable time after the person seeking to recover the amount has acquired notice that the endorsement is forged or unauthorized, and may be given in the same manner as notice of protest or dishonour under the Act.

As to "reasonable time," cf. secs. 77, 86 and 166, where the same expression is used.

The section does not affect the rights or position of the drawer or endorsers prior to the forged or unauthorized endorsement, they being in no way responsible for the forgery or want of authority. As a loss must be suffered by some innocent party it is only right that it should fall upon him who by his negligence or failure to enquire was imposed upon, and who had it entirely within his power to protect himself at the time of acquiring the bill. This principle is applicable to the first endorser after the forged or unauthorized endorsement and to each subsequent endorsement. But an acceptor is in a different position. When a bill is presented for payment he has no time to verify the endorsement, and usually has no means of doing so. He must pay at once or let the bill go to protest,—and he is therefore required only to act in good faith and in the ordinary course of business. Falconbridge p. 439.

51. Procuration Signature.—A signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is bound by such signature only if the agent in so signing was acting within the actual limits of his authority. 53 V., c. 33, s. 25. Eng. s. 25.

A person taking a bill signed by procuration ought to exercise due caution, and it would be only reasonable prudence to require the production of the authority in pursuance of which the bill is signed.

The section provides for the case of an instrument which shews on its face that it is signed by the hand of an agent. Cf. sec. 4, which provides that an instrument is sufficiently signed by a person if his signature is written thereon by some other person by or under his authority.

As to the signature of a corporation and notes signed on behalf of a corporation, see sec. 5.

As to the form of signature by an agent which is sufficient to shew that the agent is not to be personally liable, providing the authority is sufficient, see sec. 52.

If C. signs a bill by power of attorney from D., the form of signature should indicate the fact, as "D. per C.," "D. by C., atty.," "C. p. p. D" or "per proc. "D., C." not "D. p. C." or "per proc. C., D." The two last forms would indicate that C. is the principal and D. the agent.

Where an agent draws, accepts, makes or indorses "per pro," the taker of such a bill or note is bound to inquire as to the extent of the agent's authority. Where an agent has authority, the abuse of it does not affect a *bona fide* holder for value. The apparent authority is the real authority: *Bryant v. Quebec Bank* (1893), A. C. 170.

Subsequent recognition of an agent's acts is equivalent to previous authority, provided the agent, when he acted, assumed to act as agent. *Saunderson v. Griffiths*, 5 B. & C. 909.

Authority to indorse does not include authority to draw, and *vice versa*, and neither amounts to an authority to accept. All are, however, included in a power of general agency: *Bryant v. Quebec Bank* (1893), A. C. 179. A power of attorney to draw, indorse or accept bills does not authorize the agent to become a party to accommodation paper, *German National Bank v. Studley*, 1 Mo. App. 260 (1876), but the principal would be liable to a holder in due course: *Edwards v. Thomas*, 66 Mo., 469 (1877).

A power of attorney to administer the affairs of the principal confers no authority to indorse a note for the accommodation of the maker even when such note is only a renewal of another already indorsed by the principal. The indorser of a note is entitled to the benefit of time given to the maker.

Molsons' Bank v. Cooke, Q. R. J., 27 S. C., 130.

A local manager of an incorporated company, who was authorized only to indorse cheques for deposit with the Bank of British Columbia, indorsed and cashed at the Bank of Montreal cheques payable to the company drawn on that bank:—*Held*, the Bank of Montreal was liable to the company for the amount of the cheques so cashed: *Hinton Electric Co. v. Bank of Montreal*, 9 B. C. R., 545.

An agent appointed to wind up the business of a firm has not authority to accept bills drawn on the firm: *Odell v. Cormack*, 19 Q. B. D. 223 (1887).

A person who, without authority, signs the name of another to a bill, either simply or by procuration signature, is not liable on the instrument: *Pothill v. Walter* (1832), 3 B. & Ad. 114. He would, however, be liable for any loss arising from the false representation: *West London Commercial Bank v. Kitson*, 13 Q. B. D. 362 (1884). If the alleged principal be a fictitious or non-existing person, the signer is liable on the bill: *Cf. Kelner v. Baxter* (1866), L. R., 2 C. P. 174, and guilty of forgery. See section 131.

52. Signing in Representative Capacity.—Where a person signs a bill as drawer, indorser or acceptor, and adds words to his signature indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon; but the mere addition to his signature of words describing him as an agent, or as filling a representative character, does not exempt him from personal liability:

2. Rule for determining Capacity.—In determining whether a signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the instrument shall be adopted. 53 V., c. 33, s. 26. Eng. s. 26.

As to the sufficiency of the authority of an agent to sign a bill on behalf of a principal, see notes to secs. 4, 5 and 51. Sec. 52 deals only with the question whether the form of the signature is such as to render the principal and not the agent liable.

See sec. 132 as to signing a bill in a trade or assumed name or in the name of a firm.

Where a person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability (sec. 61).

In considering the question raised by this section, one must not overlook the distinction between bills of exchange and promissory notes. A bill of exchange is drawn on the intended acceptor in a personal character, and if he accepts, he must do so in that character or not at all. The acceptance of a bill is the signification by the *drawee* of his assent to the order of the drawer (sec. 35).

This distinction explains many of the cases in which the principal has been held not liable on a bill, as not being the drawee, although otherwise the bill has been sufficiently signed for him or on his behalf by an agent.

The principle is that the terms, agent, manager, etc., attached to a signature are regarded as mere *designatio personae*, and unless the signer sets forth clearly that he subscribes it for another he is liable: *Leadbitter v. Farrow* 1816), 5 M. & S. at p. 349.

As to liability of agent signing his principal's name without authority, see note to last section.

By section 61 (2), a representative who is compelled to indorse may do so in such terms as to negative personal liability.

The case of an executor or administrator often gives rise to difficulty. Where an executor merely winds up a transaction commenced by the testator it is right that he should be able to protect himself from personal liability, but where he carries on the business and engages in fresh transactions it is clear that the fact that he is an executor will not enable him to carry it on as a limited liability concern (*Chalmers*, p. 79).

Authority to execute and negotiate bills and notes in the name of the principal will be implied from the appointment to a particular clerkship or office where the customary duties are to execute and negotiate bills in the name of the principal.

Where a principal has repeatedly recognized or ratified the act of the agent by payment of bills or notes, or in any other way, an implied authority will be presumed or, at least the principle will be estopped in the future from denying the authority of the agent.

CONSIDERATION.

53. Valuable—Sufficiency—Antecedent Debt.—Valuable consideration for a bill may be constituted by,—

- (a) any consideration sufficient to support a simple contract;
- (b) an antecedent debt or liability:

2. Form of Bill.—Such a debt or liability is deemed valuable consideration, whether the bill is payable on demand or at a future time. 53 V., c. 33 s. 27. Eng. s. 27.

"Value" in the Act means valuable consideration (sec. 2.)

The subject of contract is within the jurisdiction of the local legislatures, and where Provincial laws conflict as to contracts on bills and notes, the principles governing conflict of laws will be applied.

It was held by the Privy Council, in the case of *McGreedy v. Russell*, 56 L. T. N. S. 501 (1887), that there is no difference between French (Quebec) law and English law as to the necessity for a valuable consideration for the validity of a contract.

A consideration sufficient to support a simple contract may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other: *Curry v. Misa*, L. R. 10 Ex. 162 (1875). The payment of money, however small the sum, and the sale of goods, however low the value—if there is an absence of fraud—will enable the holder to recover against prior parties. The Courts do not enquire into the adequacy of a *bona fide* consideration, *Jones v. Gordon* (1877), 2 App. Cas. 616 H. L.; but inadequacy of consideration may be evidence of bad faith or fraud: *Simon v. Cridland* (1862), 5 L. T. N. S. 524. A cross acceptance, *Burden v. Benton* (1847), 9 Q. B. 843; a forbearance of the debt of a third person, *Crears v. Hunter* (1887), 19 Q. B. D. 241; the compromise of a disputed claim,

although it afterwards appears that the claim was wholly unfounded, *Callisher v. Bäschoffsheim*, L. R., 5 Q. B. 449 (1870); a promise to give up a bill thought to be invalid, *Smith v. Smith*, 13 C. B. N. S. 418 (1863); a debt barred by the Statute of Limitations, *Wright v. Wright*, 6 Ont. P. R. 295 (1876); the obligation on the part of a thief to restore stolen property, *London & County Bank v. River Plate Bank* (1888), 21 Q. B. D. 535 C. A.; the obligation to recompense the father for injury done to his minor son, *Hutley v. Morash* 27 N. S. 281 (1894), constitute value; but the signing of a deed of composition, *Bury v. Nowell*, Q. R., 10 S. C. 537 (1897); a debt represented to be due though not really due, *Southall v. Rigg*, 11 C. B. 481 (1851); the giving up of a void note, *Coward v. Hughes*, 1 K. & J. 443 (1855); a voluntary gift of money, *Hill v. Wilson*, L. R., 8 Ch. 894 (1873); buying the supposed patent rights to what proves not to be a new and useful invention, *Almour v. Cable*, Ramsay A. C. 87 (1886), do not constitute value.

A fluctuating balance may form a consideration for a bill: *Pease v. Hirst*, 10 B. & C. 122.

A bill must not be expressed to be given for a future consideration, for this would render it conditional and invalid. 16 M. & W. 146, but notes given to an insurance company for premiums subsequently earned are valid: *Wood v. Shaw*, 3 L. C. J. 169 (1858).

54. Holder for Value.—Where value has, at any time, been given for a bill, the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

2. In Case of Lien.—Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien. 53 V., c. 33, s. 27. Eng. s. 27.

Holder for Value.—"Holder" is defined by sec. 2 and "holder in due course" by sec. 56. The latter must take the bill for value, but a holder for value may or may not be a holder in due course.

The holder of a bill who receives it from a holder for value but does not himself give value for it, has all the rights of a holder for value against all parties to the bill except the person from whom he received it. The payee of a bill who holds it for value, endorses it to D. without value, e.g., by way of gift or for collection. D., as regards the drawer and acceptor, is a holder for value.

A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of a holder in due course as regards the acceptor and all parties to the bill prior to that holder (sec. 57).

Holder having a Lien.—The person who discounts a bill is a holder for full value. The pledgee of a bill is a holder for value to the extent of the debt secured, and if he sues a third party, he sues as trustee for the pledgor, as regards the difference between the amount of the debt secured and the amount of the bill.

As to bank's lien, see Bank Act, sec. 77.

C., the holder of a bill for \$100, deposits it with D. as security for a running account. At the time the bill matures the balance is in C.'s favour, but subsequently the balance turns against him to the extent of \$50. D. is a holder for value as to \$50.

55. Accommodation bill.—An accommodation party to a bill is a person who has signed a bill as drawer, acceptor or endorser, without receiving value therefor, and for the purpose of lending his name to some other person.

2. Liability of Party.—An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not. 53 V., c. 33, s. 28. Eng. s. 28.

An accommodation bill is a bill whereof the acceptor is in substance a mere surety for some other person who may or may not be a party thereto: *Cf. Oriental Financial Corp. v. Overend* (1871), L. R. 7 Ch. 142, but where there is a running account between the drawer and the drawee, and a bill is accepted, it is not an accommodation bill, even although the account was against the drawer at the time of acceptance: *re Overend, Gurney & Co. Ex parte Swan*, L. R. 6 Eq. 356 (1868).

An accommodation bill is not issued within the meaning of section 145 of the Act until it comes into possession of some person who can sue upon it: *Engel v. Stourton*, 5 T. L. R. 444 (1889).

Where an accommodation bill is paid in due course by the party accommodated, the bill is discharged, section 139 (3). If accepted for the benefit of a drawer or indorser he is liable without presentment for payment, protest or notice of dishonor, section 92 (c.) and (d.), section 106 (c. 4) and (d. 3) and section 111. As to negotiation of an overdue accommodation bill, see section 70.

Conversely, an accommodation party, known to be such, may avail himself of any defence, arising out of the bill transaction, which the person accommodated could have set up: *Bechervaise v. Lewis* (1872), L. R., 7 C. P. 377. He may also be released by the holder giving time to the principal, if the holder is aware of the relation between them.

56. Holder in Due Course—Notice—Good Faith.—A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—

(a) That he became the holder of it before it was overdue and without notice that it had been previously dishonoured if such was the fact:

(b) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

2. Title Defective.—In particular the title of a person who negotiates a bill is defective within the meaning of this Act, when he obtained the bill, or the acceptance thereof, by fraud, duress or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud. 53 V., c. 33, s. 29. Eng. s. 29.

"Holder" means the payee or endorsee of a bill or note who is in possession of it (sec. 2). "Bearer" is defined by sec. 2. The right and powers of a holder are defined by sec. 74. As to negotiation, see secs. 60, *et seq.*, and as to overdue or dishonoured bills, see secs. 70, *et seq.*

The bill must be "complete and regular on the face of it," and meet all the requirements of section 17. If the bill itself conveys a warning, *caveat emptor*. The holder, however honest, can acquire no better title than the person had from whom he took it. Thus if the holder takes a blank acceptance (section 31), or a bill wanting in any material particular, such as an undated bill, etc., he takes it at his peril, *Arde v. Dixon* (1851), 6 Exch. 869; but the fact of a bill being post-dated does not prevent its being regular within the meaning of this section: *Carpenter v. Street* 6 T. L. R. 410 (1890). The holder also takes at his risk a bill which has been torn and the pieces past-

ed together, if the tears appear to show an intention to cancel it : *Ingham v. Primrose* (1859), 7 C. B. N. S. 82.

CHEQUE.—STOPPING PAYMENT.—HOLDER IN DUE COURSE.—The defendant R. having given his cheque for \$491.25 to the defendant D., the latter indorsed it to the order of defendant G., who deposited it to her credit in the Banque d'Epargne, and drew \$450 on account of such deposit. The day after the cheque was signed payment of it was stopped by the maker and when, in the ordinary course of the bank's business, and within a reasonable delay, it was presented to the bank on which it was drawn payment was refused. Plaintiff, the official who had received the deposit by G., without requiring the cheque to be first marked "accepted" contrary to rule was held responsible for the amount to the Banque d'Epargne, and the plaintiff, handing cheque over to him, with subrogation of all their rights as to it that he might exercise his recourse against the parties. To his action against them the maker and indorsers pleaded that he was not a holder in due course since he did not become holder until after payment was refused and he was given notice of such refusal. *Held*:—That the indorser could not raise the question whether or not he was a holder in due course, the cheque not being a nullity.—That G. was a holder in due course, having become holder before it was presented for payment and, consequently, the Bank d'Epargne and the plaintiff, holding their title from her, possessed, as against the makers and indorsers, all the rights of a holder in due course.—That the maker and prior indorser should pay the full amount of the cheque, although the Banque d'Epargne had retained the balance of the deposit made by G., which was a personal affair between the latter and the bank. *Gauthier v. Reinhardt*, Q. R. J., 26 S. C. 134.

"Notice" means actual, though not formal notice, that is to say, either knowledge of the facts, or a suspicion of something wrong, combined with a wilful disregard of the means of knowledge: *Raphael v. Bank of England* (1885), 17 C. B. 174; but mere negligence does not fix a holder with the defective title of the person passing it to him. The fact that a bill is overdue, or that there is an irregularity patent on the face of it, operates as notice.

Notice to the principal is notice to the agent, and notice to the agent is notice to the principal, subject to the proviso (10 that when the agent is himself a party to the fraud he is not to be taken to have disclosed it to his principal, *Ex parte Oriental Bank* (1870), L. R. 5 Ch. 358 (1870); and (2) where a bill is negotiated to an agent and notice is given to the principal, or *vice versa*, there must be a reasonable time for communication: *Cf. Willis v. Bank of England* (1835), 4 A. & E. 39.

As to good faith and the tests therefor, see section 3; for value, see section 53.

Fraud.—A bill is affected with fraud when the issue or any subsequent negotiation of it is obtained by some misrepresentations or untrue statements intentionally made for that purpose. *McCullum v. Church*: or when it was negotiated in breach of faith, *Lloyd v. Howard* (1850), 15 Q.B. 995; or in fraud of third parties: *Bonisteel v. Saylor*, 17 Ont. A. R. 505 (1800); *Jones v. Gordon* (1877), 2 App. Cas. 616, H. L. Fraud is never presumed: it must be proved: C. C. Art. 993.

The defendant joined in a promissory note, as the payees knew, for the accommodation of his co-makers. When it became due, the latter tendered the renewal note, purporting to be signed by the defendant, which the payees accepted, and gave up the original

note stamped, "paid." The primary debtor became insolvent and died, and the payees afterwards sued the defendant on the renewal note only in a Division Court, when the defendant swore he never signed it, but, nevertheless, there was verdict and judgment for the plaintiffs. A new trial was then granted, resulting in a verdict for the defendant. A further new trial then being granted, the judge, at the trial, allowed the plaintiffs to claim in the alternative upon the original note, as well as on the renewal, and to amend his claim accordingly. A verdict was then returned for the plaintiff on the original note:—Held, that the renewal note being a forgery, so far as the defendant's signature was concerned, and the plaintiffs, therefore, having been induced by the fraud of the primary debtor to give him up the original note, the plaintiffs retained a right to recover in equity on the latter.

Matthews v. Marsh, 5 O. L. R. 540 (D.C.).

Duress.—May consist in actual violence or in threats thereof: *Duncan v. Scott* (1807), 1 Camp, 100. See also *Western Bank v. McGill*, 32 S. C. R. 581.

Violence or Fear is a cause of nullity whether practised or produced by the party for whose benefit the contract is made or by any other person: C. C. Art. 994. *Macfarlane v. Dewey*, 15 L. C. J. 85 (1870).

Illegal Consideration.—The consideration for a bill is illegal which is wholly or in part immoral, contrary to public policy, or forbidden by statute. Promissory notes to creditors for the balance of their claim for signing a deed of composition or discharge, *Gagneau v. Lariviere*, Q. R., 1 S. C. 491 (1892); notes given in satisfaction of a wager on an election, *Dufresne v. Guerremont*, 5 L. C. J. 278 (1859); or as a subscription to an election fund, *Dansereau v. St. Louis*, 18 S. C. Can. 587 (1890); or in settlement of a "bucket shop" transaction, *Dalglish v. Bond*, M. L. R., 7 S. C. 400 (1890); or to a hotelkeeper in payment for liquor, *Benard v. McKay*, 9 Man. 151 (1893), are void. A renewal or substitution of a new instrument for the old would not cure the defect arising from illegal consideration (*Maclaren*).

The test whether a bill or note be contaminated with an illegal transaction is this: "Does the plaintiff require any aid from the illegal transaction to establish his case?" *Simpson v. Bloss*, 7 Taunt. 246.

Contracts with a public enemy are illegal; and a bill drawn by an alien enemy on his debtor here, and indorsed to the plaintiff, a British subject resident in the hostile country, cannot be recovered on, though the plaintiff do not sue until the return of peace, and though he were resident at the time of taking the bill in a hostile country. *Willison v. Patteson*, 7 Taunt. 440. But where a British prisoner in France drew a bill of an English subject, and indorsed it to the plaintiff, then an alien enemy, it was held that after the return of peace the plaintiff might recover. *Antoine v. Morshead*, 6 Taunt. 237. A bill drawn by a British prisoner in favor of an alien enemy cannot be enforced by the payee. Byles, 14th ed., p. 159.

In the case of *Crowder-Jones v. Sullivan*, 9 O. L. R. 27, the plaintiff, who for several years had been housekeeper for a widower with a young daughter, was about to be married when her employer promised her, if she would continue in his service as housekeeper so long as he needed her and abandon her contemplated marriage, he would either pay her \$1,000 in cash, give her a promissory note for \$1,500, or remember her in his will. The plaintiff thereupon abandoned the marriage, and continued her service

until her employer's death, which occurred four years afterwards, he, in the meantime having given her a note for \$1,500. In an action against his administrator on the note:—*Held*, that the primary object of the agreement was the continuing in the intestate's service, the restraint of marriage being merely an incident thereto, and that, under all the circumstances, the restraint was not such an unreasonable one as could be said to be contrary to the policy of the law. Judgment of Street, J., 6 O. L. R. 708, reversed. *Crowder-Jones v. Sullivan*, 9 O. L. R. 27, C. A.

There is no action for the recovery of the amount of a promissory note or of a renewal, originally given for the purpose of raising funds to promote an election.

St. Pierre v. L'Ecuyer, 23 Que. S. C. 495.

57. Right of Subsequent Holder.—A holder, whether for value or not, who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder. 53 V., c. 33, s. 29. Eng. s. 29.

See sec. 54 as to a holder for value.

As to a holder in due course, see secs. 56 and 58.

Previous notice or knowledge of the original defect in the bill is not sufficient to preclude him from acquiring all the rights and privileges of a holder in due course: *May v. Chapman* (1847), 16 M. & W. 355; *Embry v. Jemison*, 131 U.S. 336 (1888).

58. Presumption of value.—Every party whose signature appears on a bill is *prima facie* deemed to have become a party thereto for value.

2. Due Course—Burden of Proof.—Every holder of a bill is *prima facie* deemed to be a holder in due course; but if, in action on a bill it is admitted or proved that the acceptance, issue or subsequent negotiation of the bill is affected with fraud, duress or force and fear, or illegality, the burden of proof that he is such holder in due course shall be on him, unless and until he proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill by some other holder in due course. 53 V., c. 33, s. 30. Eng. s. 30.

As to a holder for value, see notes to sec. 54.

As to fraud, etc., as between the immediate parties, see sec. 56, sub-sec. 2.

Extrinsic evidence is admissible between immediate parties to prove absence, failure or illegality of consideration, but when a particular consideration is expressed extrinsic evidence is not admissible to prove a different consideration.

IMPEACHMENT OF VALUE.—Chalmers, p. 95-101, lays down the following rules as to the impeachment of value.

Rule 1.—Any defence available against an immediate party is available against a remote party who is in privity with such immediate party.

Privity is created in all cases by want of consideration, and in some cases by notice; it may also be created by agreement.

Rule 2.—Mere absence of consideration, total or partial, is matter of defence against an immediate party, or a remote party, who is not a holder for value, but it is not a defence against a remote party who is a holder for value: *Cf. Foreman v. Wright* (1851): 11 C. B. 492. An accommodation party is liable to a holder for value, who takes a bill knowing him to be such: *Petty v. Cooke* (1871), L. R., 6 Q. B. 790, and section 55.

Rule 3.—Total failure of consideration is a defence against an immediate party, or even against remote parties with notice, provided value has not been given for the bill, but is not a defence against a remote party, who is a holder in due course. *Robinson v. Reynolds* (1841), 2 Q. B. 211. Ex. Ch., unless he has notice: *Oulds v. Harrison* (1854), 10 Exch. 579. Where there is total failure of consideration the renewal of a note does not establish liability: *Bullion Mining Co. v. Cartwright*, 10 O. L. R. 438.

Rule 4.—Partial failure of consideration is a defence in England and in Ontario *pro tanto* against an immediate party when the failure is an ascertained and liquidated amount, but not otherwise: *Day v. Nix* (1824), 9 Moore 159. The transaction must be repudiated immediately upon learning of the partial failure of consideration: *Primeau v. Mouchelin*, 15 Man. R. 360. It is not a defence against a remote party who is a holder for value. *Araher v. Bamford* (1822), 3 Starke, 175.

Rule 5.—Fraud is an offence against an immediate party, and against a remote party who is not a holder in due course: *Whistler v. Forster* (1863), 14 C. B. S. 258.

The holder of a bill subsequent to a fraud, who is not a holder in due course, cannot enforce payment against a holder party thereto, neither can he retain the bill against the true owner: *Lloyd v. Howard* (1850), 15 Q. B. 995.

Rule 6.—Illegality of consideration, total or partial, is a defence against an immediate party, but not against a holder in due course: *Hay v. Ayling* (1851), 16 Q. B. 431.

Rule 7.—When a bill is given for a consideration which, by statute, expressly makes it void, it is, as against the party who gave it, void in the hands of all parties either immediate or remote: *Edwards v. Dick* (1821), 4 B. and Ald. 212.

59. Usurious Consideration.—No bill, although given for a usurious consideration or upon a usurious contract, is void in the hands of a holder, unless such holder had, at the time of its transfer to him, actual knowledge that it was originally given for a usurious consideration, or upon a usurious contract. 53 V., c. 33, s. 30.

The section is practically obsolete, as there is no usury law in force in Canada.

The protection of the section is not limited to a holder in due course or a holder for value, the sole condition being that the holder shall not have actual knowledge, etc.

NEGOTIATION.

60. By Transfer.—A bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

2. By Delivery.—A bill payable to bearer is negotiated by delivery.

3. By Endorsement.—A bill payable to order is negotiated by the endorsement of the holder completed by delivery. 53 V., c. 33, s. 31. Eng. s. 31.

As to "holder," see sec. 2.

As to "bearer," see sec. 2. A bill is payable to bearer which is expressed to be so payable, or on which the only or last endorsement is an indorsement in blank (sec. 21).

As to "delivery," see secs. 2, 40, and 41.

As to "endorsement," see secs. 62. *et seq.*

A bill is payable to order which is expressed to be so payable,

or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable (sec. 22).

An individual who personates the holder or who makes title through a forged indorsement is not the holder *Smith v. Union Bank* (1875), L. R., 10 Q. B. 295.

The indorsement and delivery must be made or authorized by the same person, sec. 40 (a.) Where the payee of a note indorsed it in blank before his death, and his executors delivered it to plaintiff, it was held that the latter could not recover: *Bromage v. Lloyd*, 1 Ex. 32 (1847).

On the death of the holder of a bill payable to his order, all his rights pass to his executors or personal representatives, who may negotiate it by indorsement: *Robinson v. Stone*, 2 Str. 1260 (1746). So also if a bill be made payable to a dead man in ignorance of his death: *Murray v. E. I. Co.*, 5 B. and Ald. 204 (1821).

61. Without Endorsement.—Where the holder of a bill payable to his order transfers it for value without endorsing it, the transfer gives the transferee such title as the transferer had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferer.

2. Representative Capacity.—Where any person is under obligation to endorse a bill in a representative capacity, he may endorse the bill in such terms as to negative personal liability. 53 V., c. 33, to 31. Eng. s. 31.

If the transferer should die before indorsing, his personal representatives would be subject to the same obligation: *Day v. Longhurst*, 62 L. J. Ch. 334 (1893).

When indorsement is subsequently obtained, the transfer takes effect as a negotiation from the time when the indorsement is given: *Whistler v. Forster* (1863), 14 C. B. N. S. 258. Where a note is not indorsed by the payee, the presumption is that it is still his property: *Demers v. Hogle*, Q. R., 7 S. C. 476 (1895).

See section 34 (1), as to endorsements limiting or negating liability, and section 52.

62. Endorsing—Writing—Entire Bill.—An endorsement in order to operate as a negotiation,—

(a) must be written on the bill itself, and be signed by the endorser;

(b) must be an endorsement of the entire bill.

2. Allonge.—An endorsement written on an allonge or on a copy of a bill issued or negotiated in a country where copies are recognized, is deemed to be written on the bill itself.

3. Partial Endorsement.—A partial endorsement, that is to say, an endorsement which purports to transfer to the endorsee a part only of the amount payable, or which purports to transfer the bill to two or more endorsees severally, does not operate as a negotiation of the bill. 53 V., c. 33, s. 32. Eng. s. 32.

See also sec. 63.

An endorsement means an endorsement completed by delivery (sec. 2). As to delivery, see secs. 40 and 41.

It is sufficient if the signature of the endorser is written by some other person by or under his authority (sec. 4).

As to endorsement of bills in a set, see sec. 159.

An endorsement is usually made on the back of a bill, but it may be validly made on the face of it (*Young v. Glover*, 1857, 3 Jur. N. S. Q. B. 637; *Ex parte Yates*, 1858, 2 DeG. J. 191).

Where there is no room on a bill for further endorsements, a

slip of paper, called an allonge, may be attached thereto. It becomes part of the bill, and endorsements may be written thereon.

"Copies" of bills are not used in England, Canada or the United States; but on the continent of Europe, where the practice of drawing bills in sets is not followed, copies are sometimes used for convenience of transfer while the original is being forwarded for acceptance. Maclaren on Bills, etc., 3rd ed. 203.

There may be a partial acceptance of a bill, sec. 38 (2b), and an indorsement of such a bill would be valid, as it would be an indorsement of the entire bill as accepted (Maclaren). While invalid as a negotiation, a partial indorsement, purporting to split the right of action on a bill, may operate as an authority to receive payment of the amount thereby specified: *Heilbut v. Nevill*, L. R., 4 C. P. 358 (1869).

63. Signature sufficient.—The simple signature of the endorser on the bill, without additional words, is a sufficient endorsement.

2. Two or more Payees.—Where a bill is payable to the order of two or more payees or endorsees who are not partners, all must endorse, unless the one endorsing has authority to endorse for the others. 53 V., c. 33, s. 32. Eng. s. 32.

Cf. secs. 62 and 132.

64. Misspelling Payee's Name.—Where, in a bill payable to order, the payee or endorsee is wrongly designated, or his name is misspelt, he may endorse the bill as therein described, adding his proper signature; or he may endorse by his own proper signature. 53 V., c. 33, s. 32. Eng. s. 32.

The usual and proper course is for the payee to sign first the name as described or spelt in the bill, and then to put underneath his proper signature.

A bill payable to Mrs. John Jones, should be endorsed "Ellen Jones, wife of John Jones." The more usual, and a perfectly valid form, in such a case is for the payee to sign "Mrs. John Jones," adding underneath "Ellen Jones." The signature, "Mrs. John Jones" alone is clearly irregular, and probably invalid.

65. Presumption as to Order of Endorsements.—Where there are two or more endorsements on a bill, each endorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved. 53 V., c. 33, s. 32. Eng. s. 32.

66. Disregarding Condition.—Where a bill purports to be endorsed conditionally, the condition may be disregarded by the payer, and payment to the endorsee is valid, whether the condition has been fulfilled or not, 53 V., c. 33, s. 33. Eng. s. 33.

67. Endorsement in Blank.—An endorsement may be made in blank or special;

2. An endorsement in blank specifies no endorsee, and a bill so indorsed becomes payable to bearer.

3. **Special Endorsement.**—A special endorsement specifies the person to whom, or to whose order, the bill is to be payable.

4. **Application of Act to.**—The provisions of this Act, relating to a payee apply, with the necessary modifications, to an endorsee under a special endorsement.

5. **Conversion of Blank Endorsement.**—Where a bill has been endorsed in blank, any holder may convert the blank endorsement into a special endorsement by writing above the endorser's signature a direction to pay the bill to or to the order of himself or some other person. 53 V., c. 33, ss. 32 and 34. Eng. ss. 32 and 34.

Endorsement in Blank.—A bill payable to bearer is negotiated by delivery (sec. 60.)

Special Endorsement.—An endorsement "Pay to D" or "Pay to the order of D." is equivalent to "Pay to D. or order" (sec. 22). A bill endorsed in any of these ways is specially endorsed, and is negotiated by the endorsement of the payee completed by delivery (sec. 60).

A special endorsement following an endorsement in blank controls the effect of the endorsement in blank (sec. 21.)

Provisions relating to a Payee.—See secs. 10, 21 and 22.

Conversion of Blank into Special Endorsement.—The holder of a bill endorsed by C. in blank, writes over C.'s signature the words "Pay to the order of D." The holder who does this is not liable as an endorser, but the transaction operates as a special endorsement from C. to D.

If the holder has already converted the blank endorsement into a special one by writing a direction to pay to his own order over C.'s signature, and he desires to transfer the bill to D., without being liable as an endorser, the ordinary and proper method of doing so is for him to endorse the bill himself "without recourse."

If there are several blank endorsements, the holder may convert the first into a special endorsement without discharging the subsequent indorsers: *Bank of British N. A. v. Ellis*, 2 Federal Reporter 46 (1880). He may also strike out any number of blank endorsements, but any indorser subsequent to one struck out is discharged; *aliter* if the indorsement be struck out by mistake: *Wilkinson v. Johnson* (1824), 3 B. and C. 428. The holder may in some cases make title through a person whose name is struck out, *Fairclough v. Pavi* (1854); 9 Exch. 695; but *Cf. Barilett v. Benson* (1845), 14 M. and W. 733. Indorsements for collection may be struck out by the owner of the bill, and if the indorser of a bill takes it up or pays it when dishonored, he may strike out his own and all subsequent indorsements whether blank or special: *Collow v. Lawrence* (1814), 3 M. and S. 95. The possession of a bill after dishonor by an indorser with his special indorsement struck out is *prima facie* evidence that he took up the bill on its dishonor, although there was no re-indorsement to him: *Black v. Strickland*, 3 O. R. 217 (1883).

ALTERATION TO SPECIAL INDORSEMENT.—**SUBSEQUENT SUBSTITUTION OF NAME OF NEW SPECIAL INDORSEE.**—A bank, being the holders in due course as collateral security to the account of a customer of a promissory note indorsed in blank, put their name with a stamp immediately above the indorser's name, thus converting the indorsement into a special one. Subsequently, and after maturity of the note, the account was taken over by the plaintiff bank, the intention being that the note in question and other collateral notes should pass with the account. The manager of the transferring bank handed the notes to the manager of the plaintiff bank, who, with a stamp, superimposed upon the name of the transferring bank the name of the plaintiff bank, the manager of the transferring bank authenticating the change by his initials:—*Held* (Street, J., dissenting), that there had been a valid transfer, and that the plaintiffs were holders of the note in due course. Judgment of Morgan, C.J., affirmed. *Sovereign Bank v. Gordon*, 9 O. L. R. 146.

68. Restrictive Endorsement.—An endorsement may also contain terms making it restrictive.

2. What is.—An endorsement is restrictive which prohibits the further negotiation of the bill, or which expresses that it is a mere

authority to deal with the bill as thereby directed, and not a transfer of the ownership thereof, as for example, if a bill is endorsed "Pay D only," or "Pay D for the account of X," or "Pay D. or order, for collection."

3. Rights of Endorsee.—A restrictive endorsement gives the endorsee the right to receive payment of the bill and to sue any party thereto that his endorser could have sued, but gives him no power to transfer his rights as endorsee unless it expressly authorizes him to do so.

4. If further Transfer is Authorized.—Where a restrictive endorsement authorizes further transfer, all subsequent endorsees take the bill with the same rights and subject to the same liabilities as the first endorsee under the restrictive endorsement. 53 V., c. 33, ss. 32 and 35. Eng. ss. 32 and 35

A statement in an indorsement that the value for it has been furnished by some person other than the indorsee does not make it restrictive, *e. g.*, Bill indorsed "Pay D., or order, value in account with X," is not restrictive, but in effect a simple indorsement to D. or order: *Buckley v. Jackson* (1868), L. R., 3 Ex. 135. The mere omission to add words of negotiability to a special indorsement does not make it restrictive, see section 22.

A bank, to which a promissory note is indorsed for "collection" becomes, for that purpose, the agent of the indorser, to whom it is bound to account for the amount collected. 2. The signature of another party, under that of such indorser, does not affect the relative rights and obligations growing out of such restrictive indorsement. 3. The bank is bound to pay a cheque drawn for a part only of funds collected by it under the foregoing circumstances, and is liable in damages for refusal to do so.

If the restrictive indorsement be in favor of the indorser "or order," this gives him authority to transfer the bill, but always subject to the same restriction as in the indorsement to himself: *Munroe v. Cox*, 30 U. C. Q. B. 363 (1870).

The relation between the restrictive indorser and indorsee is that of principal and agent, so that if the acceptor pay the indorser, the indorsee cannot recover from him, although he may have given value for the bill: *Williams v. Shadbolt*, 1 C. & E. 529 (1885).

69. When Negotiability ceases.—Where a bill is negotiable in its origin, it continues to be negotiable until it has been,—

(a) restrictively endorsed; or,

(b) discharged by payment or otherwise. 53 V., c. 33, s. 36. Eng. s. 36.

As to bills negotiable in their origin, see sec. 21. See sects. 137, 145 as to discharges, and sec. 68 as to restrictive endorsements. In the case of *The Exchange Bank v. Quebec Bank*, M. L. R., S. C. 10 (1890), where a cheque payable to C. M. & S., or bearer, was indorsed by them and stamped for deposit to their credit in the bank where they kept their account, and their clerk, instead of depositing it, took it to the bank on which it was drawn and received payment, the teller not noticing the writing on the back, it was held that such a cheque could not be restrictively indorsed. The check was payable to bearer, and the Court decided that no indorsement other than that by the payee could stop the negotiability of the bill, under Art. 2288 of the Quebec Civil Code.

As to transfer of an incomplete bill, see section 31.

70. Overdue Bill—Equities.—Where an overdue bill is negotiated, it can be negotiated only subject to any defect of title affecting it at its maturity, thenceforward no person who takes it

can acquire or give a better title than that which had the person from whom he took it.

2. Demand Bill when.—A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section, when it appears on the face of it to have been in circulation for an unreasonable length of time.

3. Time.—What is an unreasonable length of time for such purpose is a question of fact. 53 V., c. 33, s. 36. Eng. s. 36.

A time bill or note is overdue after the expiration of the last day of grace: *Cf. Leftley v. Mills* (1791), 4 T. R. 170.

As to the term "defect of title," see sect. 29 (2) and sect. 30 (4). Mere absence of consideration is not an equity which attaches to a bill, *Sturtevant v. Ford* (1842), 4 M. & Gr. 101; but that if there be an agreement, express or implied, not to negotiate an accommodation bill after maturity, *Grant v. Winstanley*, 21 U. C. C. P. 257 (1171), or to use a note only for a particular purpose, *MacArthur v. MacDowell*, B. S. C. Can. 571 (1893), the agreement constitutes an equity attaching to such bill and note.

Compare sect. 77 (3) as to test of reasonable time.

By section 68 (3) notes payable on demand which have been negotiated, being regarded as continuing securities, are exempted from this sub-section, but it applies to cheques; see sect. 165.

The tendency, however, seems to be to treat cheques with more clemency than bills, especially if the latter be payable at a fixed period, and an interval of six or eight days has been held not to be an unreasonable length of time. *Rothschild v. Cornely* 1 D. & L. 325. *London & County Bank v. Groom*, L. R. 8 Q. B. D. 228 but a cheque taken two months after date has been held to be stale. *Serrell v. Derbyshire Railway Co.*, 9 C. B. 811.

71. Presumption as to.—Except where an endorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue. 53 V., c. 33, s. 36. Eng. s. 36.

Cf. sect. 70.

72. Taking Bill with Notice of Dishonour.—Where a bill which is not overdue has been dishonoured, any person who takes it with notice of the dishonour takes it subject to any defect of title attaching thereto at the time of dishonour; but nothing in this section shall affect the rights of a holder in due course. 53 V., c. 33, s. 36. Eng. s. 36.

This section settles a disputed point, by putting a bill known to be dishonored on the same footing as an overdue bill (see sect. 70).

As to dishonor by non-acceptance, see sect. 81. "Holder in due course" is defined by sec. 56; see notes to that section as to the meaning of notice.

73. Re-Issue of Bill.—Where a bill is negotiated back to the drawer, or to a prior endorser, or to the acceptor, such party may, subject to the provisions of this Act, re-issue and further negotiate the bill, but he is not entitled to enforce the payment of the bill against any intervening party to whom he was previously liable. 53 V., c. 33, s. 37. Eng. s. 37.

To whom he was previously liable.—The rule of the latter part of the section is a rule against circuity of action.

The drawer of a bill payable to drawer's order endorses it for value to C., who endorses it back to D., who endorses it back to the drawer. The drawer cannot recover from C. or D., for each of them in turn could recover from him as drawer.

The payee of a bill endorses it "without recourse" to D., who endorses it to E., who endorses it back to the payee. The payee, in his character of third endorsee, can sue D. and E., for they have no claim against him as prior endorser.

The prior endorsement of the payee is not necessary in the case of an endorsement for the accommodation of the acceptor. An endorsement on a bill to one who is about to take it is valid, without the payee's prior endorsement, but the endorsement creates no obligations to those who were previously parties to the bill; it is solely for the benefit of those who take subsequently.

Cf. *Wilders v. Stevens*, 1846, 15 M. & W. 212; *Morris v. Walker*, 1850, 15 Q. B. 594; *Duthie v. Esseny* 1895, 22 A. R. 192; *Glenie v. Smith* (1907), 2 K. B. 507; *Smith v. Richardson*, 1865, 16 C. P. 210; *Falconbridge*, pp. 481-2; also notes to sec. 131.

74. Rights of holder.—The rights and powers of the holder of a bill are as follows:—

(a) **May sue.**—He may sue on the bill in his own name;

(b) **Prior Defects.**—Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill;

(c) **Title from him.**—Where his title is defective, if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill; and,

(d) **Discharge from him.**—Where his title is defective, if he obtains payment of the bill, the person who pays him in due course gets a valid discharge for the bill. 53 V., c. 33, s. 38. Eng. s. 37.

This section deals only with the rights acquired by negotiation (sec. 60), that is, by transfer according to the form required by the law merchant.

See sec. 2, as to holder:

Sec. 56, as to holder in due course;

Secs. 56 and 70, as to defect of title;

Sec. 139, as to payment in due course.

By sec. 2, clause (k), defence includes counter-claim.

The right to sue upon a bill accrues upon its dishonor for non-acceptance, sect. 82, or for non-payment, sect. 95 (2).

Chalmers, p. 123, gives the following rules as to rights of action:—

Rule 1.—The holder of a bill is entitled to maintain an action thereon in his own name against all or any of the parties liable thereon, unless it be shown that he holds the bill adversely to the true owner: *Jones v. Broadhurst* (1850), 9 C. B. 173.

If a holder sues on a note, and he is not the owner, but is merely acting for another, any defence that could be set up against the real owner is available against him, *Biron v. Brossard*, M. L. R., 2 S. C. 105 (1880); but where a person holds a bill as agent or trustee for another, he cannot use it as a set-off against a claim made against him individually: *London & Bombay Bank v. Narraway* (1872), L. R., 15 Eq. 93.

Rule 2.—Subject to the rules as to transmission by act of law, when a bill is payable to a particular person or persons, or to his or their order, an action thereon must be brought in the name of such person or persons: *Atwood v. Rattenbury* (1822), 6 Moore 583.

Rule 3.—Subject to Rule 1, when a bill is payable to bearer, an action may be brought in the name of any person who has either the

actual or constructive possession thereof, and constructive possession jointly with others is sufficient to entitle the possessor to sue alone: *Jenkins v. Tongue* (1860), 29 L. J. Ex. 147.

A bill or a cheque may be seized under a writ of execution. *Watts v. Jeffries*, 3 Mac. & G. 422.

On the death of a holder of a bill the title thereto passes to his personal representatives: Williams, on Executors, 7th ed., 786.

Each one of the heirs of the creditor of a bill or note may sue for and recover his share of it: *Ex parte Desharnais*, Q. R., 11 S. C. 484 (1897).

In case of insolvency the title to the debtor's bills and notes, and the right to sue thereon, passes to the assignee or trustee (Maclaren).

An executor or administrator who indorses a bill may, in express terms, exclude personal liability, see sec. 61 (2), and as he is not the agent of the deceased he cannot by his delivery complete an indorsement written by the latter. He must indorse it *de novo*. When there are two or more executors, the indorsement of one is probably sufficient to transfer the property in the bill. (Chalmers, p. 127).

The principal defects of title arise from the causes mentioned in sect. 56. "Mere personal defences" include, in addition to these, set-off, compensation, etc. They would not include want of capacity, want of authority, the defence of forgery, or the like. (Maclaren).

If a bill be made payable to bearer or endorsed in blank, the person in possession may be presumed to be entitled to receive payment in due course, and payment to him is valid if made in good faith, although he may be a thief, finder or fraudulent holder. (Byles, p. 293).

In order to vitiate such a payment, bad faith must be clearly shown. Proof of suspicious circumstances would not suffice. *Ferrie v. Wardens of the House of Industry*, 1 Rev. de Leg. 27 (1845).

PRESENTMENT FOR ACCEPTANCE.

75. When necessary.—Where a bill is payable at sight or after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

2. Express Stipulation.—Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business, of the drawee, it must be presented for acceptance before it can be presented for payment.

3. Other Cases.—In no other case is presentment for acceptance necessary in order to render liable any party to the bill. 53 V., c. 33, s. 39. Eng. s. 39. s

As to due date of bills payable at and after sight, see section 45 (2).

Where presentment is optional, the object of presenting is (1) to obtain the acceptance of the drawee, and thereby secure his liability as a party to the bill; and (2) to obtain an immediate right of recourse against antecedent parties in case the bill is dishonored by non-acceptance. An agent is bound to use due diligence in presenting for acceptance, even when presentment is optional for the purposes of the Act, and he is liable to his principal for damage resulting from his negligence: *Bank of Van Diemen's Land v. Victoria Bank* (1871), L. R. 3 P. C. 542. A bill

in the form "Pay without acceptance" is valid: *R. v. Kinnear* (1838), 2 M. & R. 117.

Subject to sect. 77, the question of the due presentment is material only when acceptance cannot be obtained. If acceptance is obtained, the informality of the presentment is immaterial (*Chalmers*, p. 132).

For persons to whom presentment should be made, see sect. 78. For place and hour of presentment, see section 85 and note to section 78:

76. Presentment Excused.—Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and endorsers. 53 V., c. 33, s. 39. Eng. s. 39.

Cf. s. 75.

77. Sight Bill.—Subject to the provisions of this Act, when a bill payable at sight or after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

2. If not Presented.—If he does not do so, the drawer and all endorsers prior to that holder are discharged.

3. Reasonable Time.—In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case. 53 V., c. 33, s. 40; 54-55 V., c. 17, s. 5. Eng. s. 40.

The provisions of the Act to which this section is subject are those found in section 79 relating to excuses for presentment.

Reasonable time is a mixed question of law and fact, and in determining it regard must be had to the interests of the holder as well as to the interests of the drawer and indorsers: *Ramchurn Mullick v. L. Radakissen* (1854), 9 Moore P. C. 46.

78. Rules—A bill is duly presented for acceptance which is presented in accordance with the following rules, namely:—

(a) **By Holder to Drawee.**—The presentment must be made by or on behalf of the holder to the drawee or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue;

(b) **To all Drawees.**—Where a bill is addressed to two or more drawees, who are not partners, presentment must be made to them all, unless one has authority to accept for all, when presentment may be made to him only;

(c) **To Personal Representative.**—Where the drawer is dead, presentment may be made to his personal representative;

(d) **Post-office.**—Where authorized by agreement or usage, a presentment through the post-office is sufficient. 53 V., c. 33, s. 41, Eng. s. 41.

As to the cases in which presentment for acceptance is necessary, see secs. 75 to 77.

The question of due presentment is material only where the holder of a bill payable at or after sight fails to present it for acceptance or to negotiate it within a reasonable time (sec. 77). or when acceptance cannot be obtained. Acceptance cures the informality of the presentment.

The holder by whom or on whose behalf the bill is presented need not be the owner or even a lawful holder: *Cf. Morrison v. Buchanan* (1833), 6 C. & P. 18; *Noughier*, sect. 462. He must actually exhibit the bill: *Fall River U. Bank v. Willard*, 5 Metcalf (Mass.) 216 (1842). Presentment to a servant of the drawee who opened the door of his residence would not be sufficient (*Chitty on Bills*, 11 ed., p. 156), but presentment to a clerk in his office would be valid. Reasonable diligence must be used to find the drawee or some person authorized to act for him. When the drawee is a trader, presentment should be made to him at his place of business, if possible. As to what is a reasonable hour, the rule may be stated as follows:—If a bill be payable at a bank, it must be presented within banking hours: *Waters v. Reiffenstein*, 16 L. C. R. 297 (1866). If at a trader's place of business, then within ordinary business hours. Presentment at 5 p.m. at the door of a store which was found closed held sufficient: *Reed v. Kavanagh*, 9 N. B. (4 Allen) 457 (1859). If at a private house, probably a presentment up to bed-time would be sufficient. In the U. S. presentments at 8 a.m. and 11 p.m. have been held unreasonable (*Daniel*, p. 448), but presentment at the maker's residence at 9 p.m. was held sufficient, although he and his family had retired: *Farnsworth v. Allen*, 4 Gray 453 (1855).

Any day is a business day except those mentioned in section 43. See section 2.

A bill should be presented for acceptance before maturity. If accepted after maturity it becomes a bill payable on demand, and should then be presented for payment within a reasonable time so as to bind endorers after acceptance: sec. 86.

If all the drawees do not accept, the acceptance is a qualified one, sect. 38. As to the consequences of a qualified acceptance, see section 83.

For presentment for payment through the post or at the post office, see section 90 (2) and 90.

79. Excuses—Drawee dead—Impracticability—Waiver.—Presentment in accordance with the aforesaid rules is excused, and a bill may be treated as dishonoured by non-acceptance,—

(a) Where the drawee is dead, or is a fictitious person or a person not having capacity to contract by bill;

(b) Where, after the exercise of reasonable diligence, such presentment cannot be effected;

(c) Where, although the presentment has been irregular, acceptance has been refused on some other ground:

2. Excuse.—The fact that the holder has reason to believe that the bill, on presentment, will be dishonoured does not excuse presentment. 53 V., c. 33, s. 41; 54-55 V., c. 17, s. 6. Eng. s. 41.

Where presentment would otherwise be obligatory, it is excused in the cases mentioned in this section.

As to the cases in which presentment for acceptance is necessary, see secs. 75 to 77.

As to what is due presentment, see sec. 78.

Where the drawee is dead, presentment to his personal representative is optional (sec. 788).

As to capacity to contract by bill, see sec. 47.

80. Time for Acceptance.—The drawee may accept a bill on the day of its due presentment to him for acceptance, or at any time within two days thereafter;

2. Dishonour.—When a bill is so duly presented for acceptance

and is not accepted within the time aforesaid, the person presenting it must treat it as dishonoured by non-acceptance.

3. Loss of rights.—If he does not so treat the bill as dishonoured, the holder shall lose his right of recourse against the drawer and endorsers.

4. Date of acceptance.—In the case of a bill payable at sight or after sight, the acceptor may date his acceptance thereon as of any of the days aforesaid but not later than the day of his actual acceptance of the bill.

5. Refusing to accept.—If the acceptance is not so dated the holder may refuse to take the acceptance, and may treat the bill as dishonoured by non-acceptance. 2. E. VII., c. 2, s. 1, Eng. s. 42.

In reckoning the time non-business days are to be excluded (sec. 6.)

The destruction or wrongful retention of the bill by the drawee does not amount to an acceptance. Protest may be made on a copy or written particulars (sec. 120), and the holder's remedy against the drawee is an action for damages.

As to the date of acceptance, cf. sec. 37, *supra*, in regard to acceptance after dishonour.

81. Dishonour—Presentment—Excuse.—A bill is dishonoured by non-acceptance,—

(a) when it is duly presented for acceptance, and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or,

(b) when presentment for acceptance is excused and the bill is not accepted. 53 V., c. 33, s. 43. Eng. s. 43.

As to due presentment, see sec. 78.

As to the cases in which presentment is excused, see sec. 79.

As to acceptance, see secs. 35, *et seq.*

If the holder does not obtain an unqualified acceptance, he may treat the bill as dishonoured by non-acceptance (sec. 83.)

As to the holder's right of recourse in the event of the dishonour of a bill by non-acceptance, see sec. 82.

82. Recourse in such Case.—Subject to the provisions of this Act, when a bill is dishonoured by non-acceptance an immediate right of recourse against the drawer and endorsers accrues to the holder, and no presentment for payment is necessary. 53 V., c. 33, s. 43. Eng. s. 43.

Subject to the provisions of the Act (see sec. 147, *infra*, as to acceptance for honour), the holder has an immediate right of recourse against drawer and endorsers. This right is suspended in the event of acceptance for honour with the holder's consent. Even if a bill has been dishonoured by refusal to accept, it is open to the holder to allow the bill to be accepted subsequently (sec. 37).

Although, except as above noted, the holder has an immediate right of recourse upon non-acceptance, his right of action is not complete until the defendant has received, or ought to have received, notice of dishonour, and, in the cases where protest is necessary the bill has been protested. See secs. 95 and 96.

As to the necessity for protest, see secs. 112 and 113.

83. Qualified acceptance.—The holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonoured by non-acceptance.

2. Assent.—When the drawer or endorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time

express his dissent to the holder, he shall be deemed to have assented thereto. 53 V., c. 33, s. 44. Eng. s. 44.

As to what acceptances are qualified, see sec. 38.

As to the holder's rights in the event of the dishonour of a bill by non-acceptance, see sec. 82 and notes.

84. Qualified acceptance without authority—Partial acceptance.—Where a qualified acceptance is taken, and the drawer or an endorser has not expressly or impliedly authorized the assent thereto, such drawer or endorser is discharged from his liability on the bill: Provided that this section shall not apply to a partial acceptance, whereof due notice has been given. 53 V., c. 33, s. 44. Eng. s. 44.

Assent to a qualified acceptance will be implied as against a drawer or any endorser who receives notice of such an acceptance and does not within a reasonable time express his dissent to the holder (sec. 83).

Where a foreign bill has been accepted as to part, it must be protested as to the balance.

If the holder is willing to accept the offer, he should then give notice of its exact terms to all the antecedent parties, and state his readiness to accept the offer if they will respectively consent: Daniel, sect. 510.

PRESENTMENT FOR PAYMENT.

85. Necessity.—Subject to the provisions of this Act, a bill must be duly presented for payment.

2. Result of none.—If it is not so presented, the drawer and endorsers shall be discharged.

3. Manner of.—Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment. 53 V., c. 33, ss. 45 and 52. Eng. ss. 45 and 52.

The provisions of the Act referred to are section 76, sections 86 to 93.

In presenting a bill it should be exhibited, section 109, and upon payment being made delivered up to the party paying. As to presentment of cheques, see section 166.

A drawee or indorser who is discharged from his liability on the bill is also discharged from his liability on the consideration therefor: *Hart v. McDougall*, 25 N. S. 38 (1892). No presentment is necessary as against the acceptor, who is the primary debtor, but if the bill be payable in a specified place and be sued before presentment, the costs are in the discretion of the court. sect. 113 See *McLellan v. McLennan*, 17 U. C. C. P. 109 (1866).

The rules applicable to the drawer or indorser of a bill apply equally to the indorser of a note or cheque, but they do not apply to the maker of a note, and they are modified as to time as regards the drawer of a cheque: section 166, 183 and 184.

86. Time for—Due date—Demand bill.—A bill is duly presented for payment which is presented,—

(a) when the bill is not payable on demand, on the day it falls due:

(b) when the bill is payable on demand, within a reasonable time after its issue, in order to render the drawer liable, and within a reasonable time after its endorsement, in order to render the endorser liable.

2. Reasonable time.—In determining what is a reasonable time

within the meaning of this section regard shall be had to the nature of the bill, the usage of trade with regard to similar bills and the facts of the particular case. 53 V., c. 33, s. 45. Eng. s. 45.

As to when a bill is payable on demand, see sec. 23. When a bill is not payable on demand, it is due and payable on the third day of grace (sec. 42.)

So far as an endorser is concerned this section applies to a cheque. A cheque is a bill drawn on a bank payable on demand (sec. 165). But the effect, so far as the drawer of a cheque is concerned, of the failure to present a cheque for payment within a reasonable time of its issue is the subject of special provisions (sec. 166; cf. exception to sub-sec. 2, sec. 165).

As to the presentment for payment of a note payable on demand, see sec. 180.

As to what is reasonable time, cf. secs. 70, 77 and 166.

Due presentment as regards time is required as regards the drawer and endorsers (sec. 85), but not as regards the acceptor (sec. 93).

87. By and to Whom.—Presentment must be made by the holder or by some person authorized to receive payment on his behalf, at the proper place, as hereinafter defined, either to the person designated by the bill as payer or to his representative or some person authorized to pay or to refuse payment on his behalf, if, with the exercise of reasonable diligence such person can there be found.

2. Two acceptors.—When a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

3. Personal representation.—When the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative if such there is, and with the exercise of reasonable diligence, he can be found. 53 V., c. 33, s. 45. Eng. s. 45.

In *Fraser v. McLeod*, 2. Terr. L. R. 154, the plaintiff, before maturity, pursuant to administrators' advertisement for creditors, filed with their solicitor a copy of a note endorsed by the deceased and a statutory declaration that it was unpaid. *Held*, that this is not such a presentment as is required by section 85 of the Bills of Exchange Act. *Held*, also, that, notwithstanding the indorser became one of the deceased maker's administrators before maturity of the note, presentment and notice of dishonour were nevertheless necessary.

As to presentment through the Post Office, see sec. 90. If the bill be lost, a copy should be presented and an indemnity tendered, but there is some doubt as to the sufficiency of this (*Chalmers*, p. 143). A protest can be made on a copy: section 120. As to the parts of a set, see sec. 153. As to non-business days, secs. 2 and 42.

Duties of Agent.—A collecting agent is, of course, liable to his principal if he does not use due diligence in presenting a bill for payment and take the proper proceedings on dishonor. Cf. *Lubbock v. Tribe* (1838), 3 M. & W. 612, and see *Deverill v. Burnell* (1873), L. R., 8 C. P. 475, as to measure of damages. The same rule applies to a pledgee or person holding a bill as collateral security: *Peacock v. Purssell* (1863), 32 L. J. C. P. 266. An agent is, as a rule, responsible for the default of a sub-agent whom he employs, but there is perhaps an exception in the case of a notary, on the ground that he is a public officer (*Daniels*, p. 343; *Parsons*, p. 480.)

If the acceptors are in different places so that presentment cannot be made to all on the day of maturity, the bill should be presented to at least one on that day and to the others as soon as practicable (Maclaren). Of course if one pays, or in refusing payment acts as agent of the others, that is enough (Chalmers, p. 146).

Presentment for acceptance under sub.-sec. 3 in such a case is excused, but may be made: section 78.

88. Place of—When specified—When not specified—When no Address is given—Other Cases.—A bill is presented at the proper place,—

(a) Where a place of payment is specified in the bill or acceptance, and the bill is there presented;

(b) Where no place of payment is specified but the address of the drawee or acceptor is given in the bill, and the bill is there presented;

(c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business, if known, and if not, at his ordinary residence, if known;

(d) In any other case, if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence. 53 V., c. 33, s. 45. Eng. s. 45.

This section and secs. 89 and 90 deal with the place of presentment. As to the necessity for presentment, see sec. 85, as to time, see sec. 86, and as to the persons by and to whom presentment must be made, see sec. 87.

The place of payment may be specified either by the drawer or acceptor. Where a person accepts a bill payable at his own bank, it is in effect an order to the bank to pay it, unless notified to the contrary, and to charge it to his account: *Bank of England v. Vagliano* (1891), A. C. 107.

89. Sufficient Presentment.—Where a bill is presented at the proper place, as aforesaid and, after the exercise of reasonable diligence, no person authorized to pay or refuse payment can there be found; no further presentment to the drawee or acceptor is required. 53 V., c. 33, s. 45. Eng. s. 45.

Cf. secs. 88 and 96.

90. Presentment at Post-Office.—Where the place of payment specified in the bill or acceptance is any city, town or village, and no place therein is specified, and the bill is presented at the drawee's or acceptor's known place of business or known ordinary residence therein, and if there is no such place of business or residence, the bill is presented at the post-office, or principal post office in such city, town or village, such presentment is sufficient.

2. Through post office.—Where authorized by agreement or usage, a presentment through the post office is sufficient. 53 V., c. 33, s. 45. Cf. Eng. s. 45.

Cf. secs. 88 and 89.

If the bill is payable at a bank in a town where there is a clearing house, it has been held that presentment through the clearing house is sufficient: *Reynolds v. Chetile*, 2 Camp. 596 (1811). If alternative places are named, it is sufficient to present it at one. *Beeching v. Gower, Holt*, N. P. C. 313 (1816).

The person who presents a bill for payment must produce it, and must be ready and willing to deliver it upon receiving pay-

ment: section 109. As to the hour of presentment, see notes to section 78.

91. Delay in presentment.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, presentment must be made with reasonable diligence. 53 V., c. 33, s. 46. Eng. s. 46.

As to causes excusing delay, cf. sec. 105 (notice of dishonour) and sec. 111 (protest).

As to the cases in which presentment for payment is dispensed with, see sec. 92.

The death of the holder just before the bill matures, *Rothschild v. Currie* (1841), 1 Q. B. 47; a state of siege or war rendering presentment impracticable, *Patience v. Townley* (1805), 2 Smith 223, and delay in transmission through the Post Office, where it was mailed in ample time, *Pier v. Heinrichschoffer* (1877), 29 Amer. R. 501, have been held to excuse delay. If presentment is delayed at the request of the drawer or indorser sought to be charged, the delay is presumably excused: *Burnett v. Monaghan*, 1 R. C. 473 (1871).

92. Dispensed with—Impracticable—Fictitious drawee—Useless—Accommodation bill—Waiver.—Presentment for payment is dispensed with,—

(a) where, after the exercise of reasonable diligence, presentment, as required by this Act, cannot be effected;

(b) where the drawee is a fictitious person,

(c) as regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented;

(d) as regards an endorser, where the bill was accepted or made for the accommodation of that endorser, and he has no reason to expect that the bill would be paid if presented;

(e) by waiver of presentment, express or implied.

2. Not dispensed with.—The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment. 53 V., c. 33, s. 46. Eng. s. 46.

Causes which dispense with presentment must be distinguished from causes which merely excuse delay.

Cf. secs. 107 and 108, *infra*, and notes, as to dispensing with notice of dishonour. Cf. sec. 106 as to waiver of notice of dishonour.

As to express stipulation in the bill waiving some or all of the holder's duties, see sec. 34.

The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity for presentment:

When the drawer is a fictitious or an incapable person, the holder may treat the instrument as a promissory note: section 26.

The fact that the drawee is a person not having capacity to contract does not excuse presentment for payment unless the case falls within the next clause, though it does excuse presentment for acceptance, see section 79 (a.)

A bill accepted for the accommodation of the drawer need not be presented in order to charge him where he has not provided funds to meet it, but should be presented to charge the indorsers: *Knapp v. Bank of Montreal*, 1 L. C. R. 252 (1850).

Prior indorsers are not liable without presentment: *Turner v. Samson*, 2 Q. B. D. 23 (1876).

Waiver is binding without consideration. It may be either before or after the time for presentment; in writing, or verbal, or inferred from conduct or circumstances. As to express waiver, see section 34 (b.)

Waiver of notice of dishonor does not include a waiver of presentment for payment: *Hill v. Heap* (1823), D. and R. N. P. C. 57.

As to presentment for payment, see section 85, and as to when it is excused, section 91. As to when a bill is overdue, see sections 23 and 43.

93. When no Place specified.—When no place of payment is specified in the bill or acceptance, presentment for payment is not necessary in order to render the acceptor liable.

2. If Place specified—Neglect.—When a place of payment is specified in the bill or acceptance, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures, but if any suit or action be instituted thereon before presentation the costs thereof shall be in the discretion of the court.

3. Delivery on Payment.—When a bill is paid the holder shall forthwith deliver it up to the party paying it. 53 V., c. 33, s. 52. Eng. s. 52.

When a bill is accepted payable at a particular place, and there only, the acceptor's position is for many purposes analogous to that of the drawer of the cheque: *Ramchurn Mullick v. L. Radakissen* (1854), 9 Moore P. C., at p. 70. If, then, he could show that he was damnified by the holder's omission to present on the proper day, he would probably be discharged: *Cf. Alexander v. Burchfield* (1842). 7 M. & Gr. 1061. But see as to this *Falconbridge*, p. 506; *Ibid.* as to the difference between the provisions of the Canadian and English Acts.

The drawers and endorsers are entitled to have the bill presented for payment; sec. 85. Cf. secs. 88 to 90.

94. Time for Presentment.—Where the address of the acceptor or for honour of a bill is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity.

2. Parties in different Places.—Where the address of the acceptor for honour is in some place other than the place where it is protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

3. Excuses for Delay.—Delay in presentment or non-presentment is excused by any circumstance which would in case of acceptance by a drawee excuse delay in presentment for payment or non-presentment for payment. 53 V., c. 33, s. 66. Eng. s. 67.

As to circumstances which would excuse delay in presentment for payment or non-presentment for payment to the drawee, see secs. 91 and 92.

As to acceptance for honour, see secs. 147 to 152.

DISHONOUR.

95. Non-payment on Presentment—Excuse.—A bill is dishonoured by non-payment,—

(a) when it is duly presented for payment and payment is refused or cannot be obtained; or,

(b) when presentment is excused and the bill is overdue and unpaid.

2. **Recourse.**—Subject to the provisions of this Act, when a bill is dishonoured by non-payment, an immediate right of recourse against the drawer, acceptor and endorsers accrues to the holder. 53 V., c. 33, s. 47. Eng. s. 47.

As to due presentment, see sec. 86.

As to the cases in which presentment is excused, see sec. 92.

Sections 81 and 82 deal with dishonour by non-acceptance.

The provisions of the Act referred to in this section are sects. 96 to 113, and 147 to 155.

As a general rule the holder's right of action against a drawer or indorser dates from the time when notice of dishonor is or ought to be received, and not from the time when it is sent, *Cas-trique v. Bernabo* (1844), 2 Q. B. 49, and in any case there is no right of action till the day after dishonor. The right of recourse must be distinguished from the right of action: *Kennedy v. Thomas* (1894), 2 Q. B. 759 C. A. An action instituted in the afternoon of the last day of grace, after dishonor, is premature: *Demers v. Rousseau*, Q. R., 1 S. C. 440 (1892). Cf. *Sinclair v. Robson*, 1853, 16 U. C. R., 211, and *Edgar v. Magee*, 1882, 1 O. R. 287; and see Falconbridge at pp. 510 *et seq.* for a discussion of the cases.

In Quebec the insolvency of the acceptor before the maturity of the bill makes it immediately exigible as against him. *Ontario Bank v. Foster*, 6 L. N. 398 (1883), but not as against an indorser: *Guilbault v. Migue*, 20 R. L. 597 (1891). Prescription does not however, begin to run until the time fixed for the maturity of the bill: *Whitley v. Pinkerton*, Q. R., 2 S. C. 256 (1892).

Where the acceptance is conditional, the condition must be fulfilled or the acceptor is not liable: *Dufresne v. Jacques Cartier Building Society*, 5 R. L. 235 (1873).

In an action on a bill or note payable at a particular place, it is not necessary to show that there were not sufficient funds at the place named; all that is necessary, even as against an indorser, is to show presentment, non-payment and notice of dishonor: *McDonald v. McArthur*, 8 Ont. A. R. 553 (1883).

96. Notice of Dishonour—Subsequent holder—Notice of non-payment.—Subject to the provisions of this Act, when a bill has been dishonoured by non-acceptance or by non-payment, notice of dishonour must be given to the drawer, and each endorser, and any drawer or endorser to whom such notice is not given is discharged: Provided that,—

of dishonour is not given, the rights of non-acceptance, and due notice

(a) where a bill is dishonoured by holder in due course subsequent to the omission shall not be prejudiced by the omission;

(b) where a bill is dishonoured by non-acceptance, and due notice of dishonour is given, it shall not be necessary to give notice of a subsequent dishonour by non-payment, unless the bill shall in the meantime have been accepted.

2. **Notice to acceptor.**—In order to render the acceptor of a bill liable it is not necessary that notice of dishonour should be given to him. 53 V., c. 33, ss. 48 and 52. Eng. ss. 48 and 52.

As to dishonour by non-acceptance, see sec. 81, and by non-payment, see sec. 95.

As to holder in due course, see sec. 56.

Secs. 97, *et seq.*, contain the rules regarding the time and manner of giving notice of dishonour; the persons by whom and to whom it should be given, and the persons for whose benefit it enures.

Delay in giving notice may be excused (sec. 105,) and notice may be dispensed with (secs. 106 to 108) under certain circumstances.

97. Notice—Time for—By Holder or Endorser—Personal Representative—Two Drawers.—Notice of dishonour in order to be valid and effectual must be given,—

(a) Not later than the juridical or business day next following the dishonour of the bill:

(b) By or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it, is himself liable on the bill;

(c) In the case of the death if known to the party giving notice of the drawer or endorser to a personal representative, if such there is, and with the exercise of reasonable diligence, he can be found;

(d) In case two or more drawers or endorsers, who are not partners to each of them, unless one of them has authority to receive such notice for the others. 53 V., c. 33, s. 49. Eng. s. 49 (1), (9), (11), (12).

The English Act requires notice to be given "within a reasonable time" after dishonour. The Canadian Act allows no latitude beyond the next juridical or business day (secs. 2 and 43,) but any hardship in this respect is avoided by the provisions of sec. 103. See Falconbridge, pp. 516 *et seq.* where the differences between the two acts are discussed.

98. Notice—Earliest time—To whom—By agent—Manner.—Notice of dishonour may be given,—

(a) As soon as the bill is dishonoured;

(b) To the party to whom the same is required to be given or to his agent in that behalf;

(c) By an agent either in his own name, or in the name of any party entitled to give notice, whether that party is his principal or not;

(d) In writing or by personal communication, and in any terms which identify the bill and intimate that the bill has been dishonoured by non-acceptance or non-payment;

2. Misdescription.—A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. 53 V., c. 33, s. 49. Eng. s. 49, (2), (5), (7), (8), (12).

Notice must be given not later than the juridical or business day next following the dishonour of the bill (sec. 97.)

As to form, see also sec. 99. Notices of dishonour are construed very liberally; see e.g., *Counsell v. Livingstone*, 1902, 2 O. L. R. 582, 4 O. L. R. 340, and cases there cited.

A notice to the drawer which describes the bill as payable at the "S. Bank," when in fact it was payable at the "T. Bank," *Bromage v. Vaughan* (1846), 16 L. J. Q. B. 10; or which describes a bill of exchange as a note, *Stockman v. Parr* (1843), 11 M. & W. 809; or which transposes the names of drawer and acceptor, *Mellersh v. Rippen* (1852), 7 Exch. 578; or which describes the ac-

ceptor by a wrong name. *Harpham v. Child* (1859), 1 F. & F. 652, may be sufficient.

The agent should be some person designated for that purpose by the party, or in charge or employed at his office, or representing him at his residence. A verbal or written notice of dishonor given to or left with a clerk at the drawer or indorser's place of business, *Allan v. Edmundson* (1848), 2 Exch. 724; or given to the wife of the drawer at his house during his absence. *Housego v. Cowne* (1837), 2 M. & W. 348, were held sufficient; it being the duty of the drawer or indorser of a bill if he be absent from his place of business or residence to see that there is some person there to receive notice on his behalf.

99. Form—Return of Bill—Signature—In point of form,—

(a) the return of a dishonoured bill to the drawer or an endorser is a sufficient notice of dishonour;

(b) a written notice need not be signed.

2. Verbal Supplement.—An insufficient written notice may be supplemented and validated by verbal communication. 53 V., c. 33, s. 49. Eng. s. 49 (6), (7).

As to form of notice, cf. sec. 98.

Clause (a) approves a common practice of collecting bankers which was previously of doubtful validity. *Chalmers*, p. 161.

It is not a prudent practice, however, to hand over to the person liable the chief evidence of his liability.

A written notice need not be signed, but it must come from a person entitled to give notice (secs. 97 and 98).

100. Notice to Agent—Effect on Principal.—Where a bill when dishonoured is in the hands of an agent he may himself give notice to the parties liable on the bill, or he may give notice to his principal, in which case the principal upon receipt of the notice shall have the same time for giving notice as if the agent had been an independent holder.

2. Time for.—If the agent gives notice to his principal he must do so within the same time as if he were an independent holder. 53 V., c. 33, s. 49. Eng. s. 49 (13).

101. Notice to Antecedent Parties.—Where a party to a bill receives due notice of dishonor, he has, after the receipt of such notice, the same period of time for giving notice to antecedent parties that the holder has after dishonor. 53 V., c. 33, s. 49. Eng. s. 49 (14).

Cf. sec. 100.

The holder must give notice not later than the juridical or business day next following the dishonour of the bill (sec. 97).

As to persons for whose benefit the notice accrues, see sec. 102.

If the holder, according to the usual custom in Canada, gives notice to all parties, he must give notice to a remote party within the same time as is limited for giving notice to an immediate party: cf. sec. 97.

102. Benefit enures—Parties to whom.—A notice of dishonor enures for the benefit,—

(a) Of all subsequent holders and of all prior endorsers who have a right of recourse against the party to whom it is given, where given on behalf of the holder.

(b) Of the holder and of all endorsers subsequent to the party so whom notice is given, where given by or on behalf of an endorser entitled under this part to give notice. 53 V., c. 33, s. 49. Eng. s. 49 (3), (4).

A notice of dishonour may be given by or on behalf of the holder, or by or on behalf of an endorser who, at the time of giving it is himself liable on the bill (sec. 97).

103. Sufficiency of giving.—Notice of the dishonour of any bill payable in Canada shall, notwithstanding anything in this Act contained be sufficiently given if it is addressed in due time to any party to such bill entitled to such notice, at his customary address or place of residence or at the place at which such bill is dated, unless any such party has, under his signature, designated another place, in which case such notice shall be sufficiently given if addressed to him in due time at such other place.

2. Sufficiency of notice.—Such notice so addressed shall be sufficient, although the place of residence of such party is other than either of the places aforesaid, and shall be deemed to have been duly served and given for all purposes if it is deposited in any post office, with the postage paid thereon, at any time during the day on which presentment has been made, or on the next following juridical or business day.

3. Death of Party.—Such notice shall not be invalid by reason only of the fact that the party to whom it is addressed is dead. 53 V., c. 33, s. 49.

This section is not in the English Act: see notes to sec. 97.

See also sec. 104.

In Canada if the bill is not dated at any place, and the actual or customary address or place of business of the endorser or person to receive notice, is not known to the holder, or other person who has to give notice, the latter must exercise due diligence to find the endorser. If by due diligence the holder cannot give notice within the time limited by sec. 97, the delay in giving notice is excused (see notes to sec. 106.)

104. Miscarriage in Post Service.—Where a notice of dishonor is duly addressed and posted, as provided in the last preceding section, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post office. 53 V., c. 33, s. 49. Cf. Eng. s. 49 (15).

It lies on the sender to prove that the letter containing the notice was duly addressed and posted: *Hawkes v. Salter* (1828), 4 Bing. 715. The sufficiency of the direction on the letter is a question of reasonable diligence (Chalmers, p. 155).

Indorsers who may wish to look to prior parties should be careful to see (1) that their proper address is given, and (2) that notice of dishonor has been given to such prior parties, and if not to give it themselves within the legal delay (MacLaren).

105. Excuse for delay.—Delay in giving notice of dishonour is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate the notice must be given with reasonable diligence. 53 V., c. 33, s. 50. Eng. s. 50.

If an indorser gives wrong address, delay caused by his doing so would be excused, *Hewitt v. Thompson* (1836), 1 M. & Robb. 541; and if the holder does not know an indorser's address, delay occasioned in making inquiries would be excused: *Baldwin v. Richardson* (1823), 1 B. & C. 245.

When the delay is caused by the party to whom notice is sent,

he cannot give an effectual notice to antecedent parties, but is liable himself: *Cf. Shelton v. Braithwaite*, 1841, 8 M. & W. 254.

As to causes excusing delay, cf. sec. 91 (presentment for payment), sec. 111 (protest). See also sec. 104.

106. Dispensed with—Reasonable Diligence—Waiver.—Notice of dishonour is dispensed with.

(a) When, after the exercise of reasonable diligence, notice as required by this Act cannot be given to or does not reach the drawer or endorser sought to be charged.

(b) By waiver express or implied;

2. **Time of.**—Notice of dishonour may be waived before the time of giving notice has arrived, or after the omission to give due notice. 53 V., c. 33, s. 50. Eng. s. 50.

Waiver of notice of dishonour in favor of the holder enures for the benefit of parties prior to such holder as well as subsequent holders; *Rabey v. Gilbert* (1861), 30 L. J. Ex. 170. Waiver of notice of dishonor by an indorser does not affect parties prior to such indorser: *Turner v. Leech* (1821), 4 B. & Ald. 451.

An acknowledgment of liability must be made with full knowledge of the facts in order to operate as a waiver of notice of dishonor: *Goodhall v. Dolley* (1787), 1 T. R. 712. Thus, a bill is refused payment at maturity. The indorser promises the holder to pay it, not knowing that it had been previously dishonored by non-acceptance. This is no waiver. Again, a waiver of notice of dishonor may not include a waiver of presentment for payment. *Keith v. Burke* (1885), 1 C. & E. 551.

In the United States it has been held that verbal waiver of notice may be revoked before the time for giving notice has expired: *Second National Bank v. Maguire* (1877), 31 Amer. R. 539.

The words "I hold myself responsible for my note" indorsed upon a promissory note, amounts to waiver of protest, and a declaration alleging this fact is sufficient in law. *Ranger v. Aumis*, 5 Que., P. R. 450.

The curator to a *session de biens* has no authority to waive the protest of a note of which the insolvent is endorser. *Molsons Bank v. Steele*, Q. R. 23, S. C. 316.

The curator appointed upon an abandonment of property under the Code of Procedure has no authority, without leave of a judge of the Superior Court or the advice of the creditors or inspectors, to waive on behalf of the insolvent, protest of a promissory note indorsed by him; and a waiver under such circumstances does not bind the indorser. (2) The right of renunciation is a personal one belonging to the indorser. *Denenberg v. Mendelsohn*, 22 Que., S. C. 474. Affirmed in the Court of Review, 23 Que., S. C. 128.

107. Dispensed with—Same Person—Fictitious Person—Presented to Drawer—No Obligation—Countermand.—Notice of dishonour is dispensed with as regards the drawer where,—

(a) Where the drawer and drawee are the same person;

(b) The drawee is a fictitious person or a person not having capacity to contract;

(c) The drawer is the person to whom the bill is presented for payment;

(d) The drawee or acceptor is, as between himself and the drawer, under no obligation to accept or pay the bill;

(e) The drawer has countermanded payment. 53 V., c. 33, s. 50. Eng. s. 50.

See notes to sec. 106.

As to the meaning of fictitious person, cf. notes to sec. 21.

As to clauses (a) and (b), cf. sec. 26.

Prima facie the acceptor, as between himself and the drawer, is the person bound to pay the bill, but evidence is admissible to shew that he is in reality a mere surety for the drawer or some other party. *Cook v. Lister*, 1863, 32 L. J. C. P. at p. 127.

108. Dispensed with—Fictitious Person—Presented to Endorser.—Accommodation.—Notice of dishonour is dispensed with as regards the endorser where,—

(a) Where the drawee is a fictitious person or a person not having capacity to contract, and the endorser was aware of the fact at the time he endorsed the bill;

(b) The endorser is the person to whom the bill is presented for payment;

(c) The bill was accepted or made for his accommodation. 53 V., c. 33, s. 50. Eng. s. 50.

See notes to secs. 106 and 107.

Notice of dishonour is not dispensed with because presentment is dispensed with, or because the drawer or indorser has reason to believe the bill will not be paid, or because the acceptor is dead and no representative can be found: *Carew v. Duckworth*, L. R. 4 Ex. 319 (1869); *Caunt v. Thompson*, 7 C. B. 400 (1849); or because the drawer or indorser is dead: section 49 (1) (MacLaren).

Liability of persons not parties.—The liability of persons who are not parties to a bill, but who may be guarantors of the bill or some of the parties to it, or who may be liable on the consideration for which the bill is given, is not affected by the act, but will remain subject to the laws in force in the several provinces (MacLaren).

A person who has given a guarantee for the payment of a bill is liable without notice of dishonour, *Palmer v. Baker*, 22 U. C. C. P. 59 (1871); also if he guarantees the payment of the price of goods for which the bill is given, *Anderson v. Archibald*, 9 N. S. (3 G. & O.), 88 (1872); or probably if he is liable on the consideration for the bill (Chalmers, p. 170, and cases there cited); but if the goods are for the drawer of the bill the guarantor is entitled to notice: *Phillips v. Astling*, 2 Taunt. 206 (1809).

As to those who have placed their names on bills in Quebec "pour aval" or as warrantors elsewhere, see section 131.

PROTEST.

109. Necessity of.—In order to render the acceptor of a bill liable it is not necessary to protest it. 53 V., c. 33, s. 52. Eng. s. 52.

The acceptor of a bill is not entitled to notice of dishonour (sec. 96). The same rule in regard to protest and notice of dishonour applies to the maker of a note (sec. 186) as to the acceptor of a bill.

As to drawer and endorsers, see secs. 112 to 114.

110. Dispensed with.—Protest is dispensed with by any circumstances which would dispense with notice of dishonour. 53 V., c. 33, s. 51. Eng. s. 51.

See secs. 106 to 108.

111. Delay Excused.—Delay in noting or protesting is excused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence.

2. Diligence.—When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. 53 V., c. 33, s. 51. Eng. s. 51.

As to excuse for delay, cf. sec. 91 (presentment for payment) and sec. 105 (notice of dishonour).

112. Foreign Bill, non-acceptance.—Where a foreign bill appearing on the face of it to be such has been dishonoured by non-acceptance, it must be duly protested for non-acceptance.

2. Non-payment.—Where a foreign bill which has not been previously dishonoured by non-acceptance is dishonoured by non-payment, it must be duly protested for non-payment.

3. Balance.—Where a foreign bill has been accepted only as to part it must be protested as to the balance.

4. Discharge.—If a foreign bill is not protested as by this section required the drawer and endorsers are discharged. 53 V., c. 33, ss. 44 and 51. Eng. ss. 44 and 51.

See foreign bill defined by section 25. Foreign notes as well as bills should be protested in order to bind the endorsers: section 186. By section 109 protest is not necessary in order to charge the acceptor of a bill.

113. Protest of Inland Bill.—Quebec.—Where an inland bill has been dishonored it may, if the holder thinks fit, be noted and protested for non-acceptance or non-payment, as the case may be; but it shall not, except in the Province of Quebec, be necessary to note or protest an inland bill in order to have recourse against the drawer or endorsers. 53 V., c. 33, s. 51. Cf. Eng. s. 51.

By section 165 this provision applies to cheques, and by section 186 to promissory notes. By section 134 (c.) the expenses of noting can be recovered as liquidated damages.

The protesting of inland bills for non-acceptance or for better security, elsewhere than in Quebec, is only compulsory as a preliminary to an acceptance *supra* protest for honor, section 147, and a protest for non-payment, only as a preliminary to presentment for payment to the acceptor for honor, or referee in case of need: section 117.

114. Discharge in Default of Protest.—In the case of an inland bill drawn upon any person in the Province of Quebec or payable or accepted at any place in the said province, the parties liable on the said bill other than the acceptor are, in default of protest for non-acceptance or non-payment as the case may be, and of notice thereof, discharged, except in cases where the circumstances are such as would dispense with notice of dishonor.

2. Protest unnecessary.—Except as in this section provided, where a bill does not on the face of it appear to be a foreign bill, protest thereof in case of dishonour is unnecessary. 53 V., c. 33, s. 51. Cf. Eng., s. 51.

In Quebec, as in the other provinces and in England, it is not necessary to protest a bill in order to render the acceptor liable. (sec. 109).

As against other parties, there must in Quebec be protest and notice of protest unless these are dispensed with. (Cf. secs. 106 to 108 as to dispensing with notice of dishonour).

In the other provinces, the English rule prevails, and any bill which does not appear on its face to be a foreign bill need not be protested. The Canadian Act, unlike the English Act, expressly recognizes the propriety of the protest of any dishonoured bill (sec. 113).

115. Subsequent Protest for non-payment.—A bill which has been protested for non-acceptance, or a bill of which protest for

non-acceptance has been waived, may be subsequently protested for non-payment. 63 V., c. 33, s. 51. Eng. s. 51.

Protest in the cases provided for in this section might be necessary for the purpose of charging a foreign drawer or endorser in his own country. Generally, however, the duties of the holder would be regarded as regulated by the law of the place where they are to be performed (cf. sec. 162; Chalmers, p. 175).

116. Protest for better Security.—Where the acceptor of a bill suspends payment before it matures, the holder may cause the bill to be protested for better security against the drawer and endorsers. 53 V., s. 33, s. 51; 54-55 V., c. 17, s. 7. Eng. s. 51.

In Quebec, a bill becomes immediately exigible upon the insolvency of the acceptor before maturity. The provisions of the Act in regard to presentment for payment, protest and notice then become applicable and must be observed in order to bind an endorser. (*Banque Nationale v. Martel*, 1899, Q. R. 17 S. C. 97).

117. Acceptance for Honour.—Where a dishonoured bill has been accepted for honour *supra* protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honour, or referee in case of need.

2. Protest for non-payment.—When a bill of exchange is dishonoured by the acceptor for honour, it must be protested for non-payment by him. 53 V., c. 33, s. 66. Eng. s. 67.

It is in the option of the holder to resort to the referee in case of need or not, as he may think fit (sec. 33).

As to the nature and effect of acceptance for honour, see secs. 147 to 152.

118. Noting equivalent to Protest.—For the purposes of this Act, where a bill is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding. 53 V., c. 33, s. 92. Eng. s. 93.

119. Noting or Protest.—Subject to the provisions of this Act, when a bill is protested, the protest must be made or noted on the day of its dishonor;

2. Extending Protest.—When a bill has been duly noted, the formal protest may be extended thereafter at any time as of the date of the noting. 53 V., c. 33, ss. 51 and 92. Eng. ss. 51 and 93.

As to the extension of the protest, cf., sec. 118.

Although the protest may be extended "thereafter at any time," notice of dishonour or, where protest is necessary, notice of protest, must be sent within the time limited by sec. 97 or sec. 126 (as the case may be).

Notice of protest is governed by the same rules as notice of dishonour in regard to time and manner of giving notice (sec. 126).

120. Protest on Copy or Particulars.—Where a bill is lost or destroyed, or is wrongly or accidentally detained from the person entitled to hold it, or is accidentally retained in a place other than where payable, protest may be made on a copy or written particulars thereof. 53 V., c. 33, s. 51. Eng. s. 51.

As to lost bills, see further sec. 156 and sec. 157.

121. Place of Protest.—Where Bill returned.—Time when.—A bill must be protested at the place where it is dishonoured, or at some other place in Canada situate within five miles of the place of presentment and dishonour of such bill: Provided that,—

(a) When a bill is presented through the post office, and returned by post dishonored, it may be protested at the place to which it is returned, not later than on the day of its return or the next juridical day;

(b) Every protest for dishonor, either for non-acceptance or non-payment, may be made on the day of such dishonor and in case of non-acceptance at any time after non-acceptance, and in case of non-payment, at any time after three o'clock in the afternoon. 53 V., c. 33, s. 51. Cf. Eng. s. 51.

As to juridical days, see sec. 43.

122. Contents of Protest—Person—Place—Reason—Proceeding—Excuse.—A protest must contain a copy of the bill, or the original bill may be annexed thereto, and the protest must be signed by the notary making it, and must specify,—

(a) the person at whose request the bill is protested;

(b) the place and date of protest;

(c) the cause or reason for protesting the bill;

(d) the demand made, and the answer given, if any; or

(e) the fact that the drawee or acceptor could not be found.

53 V., c. 33, s. 51. Eng. s. 51.

As to form of protest, cf. sec. 125 and schedule.

123. Official when Notary is not Accessible.—Where a dishonoured bill is authorized or required to be protested, and the services of a notary cannot be obtained at the place where the bill is dishonoured, any justice of the peace resident in the place may present and protest such bill and give all necessary notices and shall have all the necessary powers of a notary in respect thereto. 53 V., c. 33, s. 93. Cf. Eng. s. 94.

124. Expenses.—The expense of noting and protesting any bill and the postage thereby incurred shall be allowed and paid to the holder in addition to any interest thereon:

2. **Fees.**—Notaries may charge the fees in each province heretofore allowed them. 53 V., c. 33, s. 93.

125. Forms.—The forms in the schedule to this Act may be used in noting or protesting any bill and in giving notice thereof.

2. **Contents.**—A copy of the bill and endorsement may be included in the forms, or the original bill may be annexed and the necessary changes in that behalf made in the forms. 53 V., c. 33, s. 93. Cf. Eng. s. 94.

As to sub-sec. 2, cf., sec. 122.

The forms in the schedule are not obligatory. As to form of notice of dishonour, see notes to sec. 96.

126. When Notice of Protest shall be Given.—Notice of the protest of any bill payable in Canada shall be sufficiently given and shall be sufficient and deemed to have been duly given and served if given during the day on which protest has been made or on the next following juridical or business day, to the same parties and in the same manner and addressed in the same way as is provided by this part for notice of dishonor. 53 V., c. 33, s. 49.

Subject to the provisions of the Act, protest must be made or noted on the day of the dishonour of a bill (sec. 119).

As to the persons to whom notice must be given, see sec. 96. As to the manner, see secs. 98 and 99. As to the manner in which the notice is to be addressed, see secs. 103 and 104.

127. Equitable Assignment.—A bill, of itself, does not operate as an assignment of funds in the hands of the drawee avail-

able for the payment thereof, and the drawee of a bill who does not accept as required by this Act is not liable on the instrument. 53 V., c. 33, s. 53 Eng. s. 53.

A bill of exchange is an unconditional order in writing, but an order to pay out of a particular fund is not unconditional and therefore such an order is not a bill (sec. 17).

Subject to the rule that a customer is entitled to draw cheques on his banker, a creditor as such, is not entitled to draw on his debtor in respect of his debt; and the drawee of an unaccepted bill of exchange is under no obligation to accept or pay it unless he has for valuable consideration expressly or impliedly agreed to do so; Chitty, p. 200. Cf. *Goodwin v. Roberts* (1875), L. R. 10 Ex. at p. 351.

It is usual, but not necessary, for the drawer to advise the drawee of drafts drawn on him by letter of advice: *Arnold v. Cheque Bank* (1876), 1 C. P. D. 586. If, says Story, section 156, a bill is drawn "as per advice," then the drawee is not bound to accept or pay without such advice, and if he does it is at his own peril.

When the drawee contracts with the drawer to accept his draft, and dishonors it, the consequences reasonably resulting from the breach of contract constitute the measure of damage: *Prehn v. Royal Bank of Liverpool* (1870), L. R. 5 Ex. 92.

128. Engagement by Acceptance.—The acceptor of a bill, by accepting it, engages that he will pay it according to the tenor of his acceptance. 53 V., c. 33, s. 54. Eng. s. 54.

See section 35 as to form of valid acceptance; section 38 as to general and qualified acceptances, and section 93, as to presentment to charge acceptor. As to variation of the acceptor's liability by *ex post facto* legislation, e. g., a French "loi moratoire," see *Rouquette v. Overmann* (1875), L. R. 10 Q. B. 525. As to measure of damages, see section 134. The drawee of a bill by accepting it becomes the party primarily liable thereon to the holder. See the primary, and in general, absolute, liability of an acceptor distinguished from the secondary and conditional liability of a drawer or indorser by Bayley, J., in *Rowe v. Young* (1820), 2 Bligh H. L. at p. 467. As to the relations *inter se* of joint acceptors who are not partners, see per Wilde, C. J., in *Harmer v. Steele* (1849), 4 Ex. Ch. 13.

Drawees who have promised to accept, or who have knowingly accepted the benefit of funds obtained on a representation that they would accept, have been held liable: *Torrance v. Bank of British North America*, L. R., 5 P. C. (1873); *Bank of Montreal v. Thomas*, 16 O. R. 503 (1888).

See section 52 as to an acceptor signing as an agent or in a representative character.

129. Estoppel—Genuineness and Authority—Capacity of Drawer—Payee and Capacity.—The acceptor of a bill by accepting it is precluded from denying to a holder in due course,—

(a) the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill;

(b) in the case of a bill payable to drawer's order, the then capacity of the drawer to endorse, but not the genuineness or validity of his endorsement;

(c) in the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to endorse, but not the genuineness or validity of his endorsement. 53 V., c. 33, s. 54. Eng. s. 54.

This section deals only with estoppels arising on the bill. There may, of course, be other estoppels arising on evidence. See section 49, which is modified by this section.

If the bill be materially altered the acceptor is not precluded from setting this up: *White v. Central National Bank* (1876), 64 New York R. 316, and see section 145. But where a bank issued a draft for \$25.00 on one of its branches without advice, and the holder raised it to \$5,000 and deposited it in another bank which drew the money, and the forgery was discovered six days later, it was held that the bank which had paid could not recover: *Union Bank v. Ontario Bank*, 2 L. N. 386, 24 L. C. J. 309 (1880).

The acceptor may, of course, decline to pay on the ground that the payee's signature has been forged, or his signature not authorized. If, however, the payee be a fictitious person, the holder is entitled to treat the bill as if drawn payable to bearer. See section 21 (5) and notes thereon.

130. Drawer—Engages Acceptance and Compensation—Estoppel as to Payee.—The drawer of a bill, by drawing it,—

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or any endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 55. Eng. s. 55.

As to due presentment, see sec. 78 (for acceptance) and sec. 86 (for payment).

As to dishonour, see secs. 81 and 95.

As to the requisite proceedings on dishonour, see sec. 96 (notice of dishonour) and secs. 112 to 114 (protest).

As to a holder in due course, see sec. 56.

As to measure of damages, see section 135.

The drawer and any endorser may insert in the bill an express stipulation negating or limiting his own liability to the holder (sec. 34).

The drawer and any endorser may insert in the bill an express or co-surety with those who are sureties for the acceptor, yet he stands in a position sufficiently analogous to that of a surety to entitle him to the equities of a surety when the bill has been dishonoured, though not before. (*Duncan Fox & Co. v. N. & S. Wales Bank*, 1880, 6 App. Cas. 1, at p. 19, where the relations *inter se* of drawer or endorser, acceptor and holder are discussed.)

If a bill is dishonoured and the requisite proceedings on dishonour are taken, *prima facie* the drawer or an endorser of a bill (sec. 133) is liable to the holder or to any endorsee who is compelled to pay the bill.

Subject to the provisions of sec. 21, as to a fictitious or non-existing payee, the drawer is not estopped from denying the genuineness or validity of the payee's signature. Cf. notes to sec. 129.

131. Liability by signature.—Irregular endorsement.—No person is liable as drawer, endorser or acceptor of a bill who has not signed it as such: Provided that when a person signs a bill otherwise than as a drawer or acceptor he thereby incurs the liabilities of an endorser to a holder in due course and is subject to all the provisions of this Act respecting endorsers. 53 V., c. 33, ss. 23 and 56. Eng. ss. 23 and 56.

By sec. 4 the signature to a bill may be written by the hand of an agent, but it must be the principal's signature, not the agent's. In the case of a corporation, a bill is sufficiently signed if it is sealed with the corporate seal (sec. 5).

As to the liabilities of an endorser, see sec. 133 and notes. Under sec. 131 a person who signs a bill otherwise than as drawer or acceptor, if he is not an endorser properly so-called, is liable as an endorser only to a holder in due course.

An endorsement, properly so-called, must be made by the holder; but when a person who is not the holder of a bill or note backs it with his signature, he is not an endorser, but a *quasi*-endorser. The law annexes to his acts consequences similar to those which follow the endorsement of a bill by the holder.

Since the passing of the Act, there has been considerable difference of judicial opinion as to the liability of a stranger to an instrument who signs his name on the back, before the payee has endorsed.

In *Duthie v. Essery*, 1895, 22 A. R. 191, E. made two notes in favour of D. & Sons or order. K. endorsed them before delivery to the payees, who afterwards endorsed them for value to the plaintiff. In an action against K. it was held that the plaintiff as holder in due course was entitled to recover, the majority of the court basing their decision on sec. 131 of the Act.

In *Jenkins v. Coomber*, (1898) 2 Q. B. 168 the contrary decision was reached, and this case was followed in subsequent cases in Ontario. In *Robinson v. Mann*, 1901, 2 O. L. R. 63, 31 S. C. R., 484, it was held that a person signing his name on the back of a note before endorsement by the payee was liable. See also *Slater v. Laboree*, 1905, 10 O. L. R., 648, and *Falconbridge*, pp. 557 *et seq.*, where the cases are reviewed.

132. Trade or assumed Name.—Where a person signs a bill in a trade or assumed name he is liable thereon as if he had signed it in his own name.

2. Firm Name.—The signature of the name of a firm is equivalent to the signature by the person so signing, of the names of all persons liable as partners in that firm. 53 V., c. 33, s. 23. Eng. s. 23.

The first part of this section should be read in conjunction with section 131. If an agent becomes a party to a bill or note in his own name his undisclosed principal cannot be made liable on the bill: *Adanson Co.*, 43 L. J. Ch., p. 734, but as between immediate parties he may nevertheless be liable on the consideration.

The persons liable under this sub-section are (1) working, (2) dormant or secret partners, *Pooley v. Driver* (1876), 5 Ch. 1). 458, and (3) those who, although not really partners, have held themselves out as such: *Gurney v. Evans* (1858), 27 L. J. Ex. 166.

The partners in trading or commercial firms are presumed to have given each other authority to bind the firm by drawing, indorsing or accepting bills in the firm name for partnership purposes, but not otherwise. *Federal Bank v. Northwood*, 7 C. R. 389 (1884), and after the bill gets into the hands of a holder in due course, the presumption of authority becomes absolute: *Henderson v. Carveth*, 16 U. C. Q. B. 324.

In civil or non-trading partnerships there is no such presumption of authority. The partner who signs is bound, and so are his co-partners if they have authorized his act, or if they subsequently ratify it, but not otherwise: *Wilson v. Brown*, 6 Ont. A. R. 411 (1881). The holder must show authority, actual or ostensible, to bind a non-trading firm (Lindley, 5th ed., p. 130). Partnerships, such as professional partnerships, mining partnerships, agricultural partnerships, and commission agencies, have been held non-trading; but banking is a trading partnership (Chalmers, p. 69).

Where the name of a firm, and the name of one of the partners in it is the same, and that partner draws, indorses or accepts a bill in the common name, the signature is *prima facie* deemed to be the signature of the firm, if the firm carried on business and the individual does not, but the presumption may be rebutted by showing that the bill was not given for partnership purposes or under the authority of the firm: *Yorkshire Banking Co. v. Beatson* (1880), 5 C. P. D. 109, C. A.

When a bill payable to the order of the firm is endorsed by a partner in the firm name in fraud of his co-partners, the property therein does not pass to an indorsee with notice: *Heilbut v. Nevill* (1870), L. R. 5 C. P. 478. Ex. Ch.

The mandate and powers of the partners to bind the partnership by bill or note cease with its dissolution even though the bill or note be given in connection with a transaction begun before such dissolution. Such bills or notes would require special authority from the co-partners: *Bank of Montreal v. Page*, 98 Ill. 110 (1881). But if a partner retires from the firm, and gives no notice of his retirement he is liable, on a bill accepted by the firm, subsequent to his retirement. (Pollock, p. 52; Lindley, 5th ed., p. 181).

See also *Drouin v. Gauthier* 12 K.B. (P. E.), 442.

133. Endorser—Engages Acceptance or Compensation—Genuineness and Regularity—Validity.—The endorser of a bill, by endorsing it, subject to the effect of any express stipulation hereinbefore authorized,—

(a) engages that on due presentment it shall be accepted and paid according to its tenor, and that if it is dishonoured he will compensate the holder or a subsequent endorser who is compelled to pay it, if the requisite proceedings on dishonour are duly taken;

(b) is precluded from denying to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous endorsements;

(c) is precluded from denying to his immediate or a subsequent indorsee that the bill was, at the time of his endorsement, a valid and subsisting bill, and that he had then a good title thereto. 53 V., c. 33, s. 55. (As amended by 7-8 Edw. VII., c. 8, s. 1). Eng. s. 55.

As to the liabilities and rights of successive indorsers of a bill in regard to notice of dishonour, see secs. 101 and 102.

The indorser of a bill in his relations with the holder is in the nature of a new drawer, *Steele v. McKinley* (1880), 5 App. Cas. at pp. 767, 768, and he may, like the drawer, vary his obligation in different ways. See sections 34, 60 and 62.

The obligation of the indorser of a note is conditional, the condition being that on default by the maker, the note shall be protested and notice given to the indorser. In consequence he cannot maintain an action against the maker to be indemnified against his obligation, even though the note is due and unpaid if it has not been protested and notice given. *Trottier v. Rivard*, Q. R. 23, S. C. 526 (Sup. Ct.).

As to the nature of the contract of indorsement, see the remarks of Maule, J., in *Castrique v. Buttigieg*, 10 Moore P. C. at p. 108 (1855).

The indorsers may have an agreement varying as between themselves the undertaking in this section, and even reversing the order in which they are to be liable to each other. If two or more persons indorse a bill or note to accommodate the acceptor or maker, their relation to each other is that of co-sureties, irrespective of the order in which they have indorsed: *Macdonald v. Whit-*

field, 8 App. Cas. 733 (1883). See *Small v. Riddel*, 31 U. C. C. P. 373 (1880).

The drawer and indorsers of a bill are jointly and severally responsible to the holder for the due acceptance and payment thereof, and if it be dishonored the latter may enforce payment from all or any of the parties liable on the bill.

134. Measure of Damages, amount of Bill, interest, expenses.—Where a bill is dishonored the measure of damages which shall be deemed to be liquidated damages shall be:—

(a) the amount of the bill;

(b) interest thereon from the time of presentment for payment, if the bill is payable on demand, and from the maturity of the bill in any other case;

(c) the expenses of noting and protest. 53 V., c. 33, s. 57. Eng. s. 57.

The recovery of the damages mentioned in this section is provided for by sec. 135. Cf. sec. 136.

This section applies when a bill is dishonored either by non-acceptance, sect. 81. or by non-payment, sect. 95, and the parties have no valid defence. Bills dishonored abroad fall exclusively under the next sub-section: *re* Commercial Bank of South Australia (1887), 36 Ch. D. 522.

Amount of the Bill.—If the bill bears interest from its date or issue, this would be included section 28; *Crouse v. Park*, 3 U. C. Q. B. 458. (1847). So would exchange if indicated in the bill.

Interest.—This clause applies only to interest allowed as damages for non-payment of the bill at maturity. As to interest provided for by the bill itself, which forms part of the bill or debt, see sect. 28.

Expenses.—As to these see sect. 124. Under this term the expense of protesting for better security is not included, nor is commission: *re* English Bank of the River Plate, *Ex-parte* The Bank of Brazil (1893), 2 Ch. 438.

135. Recovery of Same.—In case of the dishonor of a bill, the holder may recover from any party liable on the bill, the drawer who has been compelled to pay the bill may recover from the acceptor, and an endorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior endorser the damages aforesaid. 53 V., c. 33, s. 57. Eng. s. 57.

As to the parties liable on a bill, see sec. 128 (acceptor), sec. 130 (drawer), secs. 131 and 133 (endorser).

The "damages aforesaid" are provided for by sec. 134.

136. Re-Exchange and Interest.—In the case of a bill which has been dishonoured abroad, in addition to the damages aforesaid, the holder may recover from the drawer or any endorser, and the drawer or an endorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment. 53 V., c. 33, s. 57. Eng. s. 57.

Apparently in the Canadian Act the word re-exchange is used to signify, not the whole amount of the damages (exclusive of interest) as used in the English Act and as explained by Byles, J., in *Susé v. Pompe*, 1860, 8 C.B.N.S., 538, 565, but the excess of those damages over the amount of the bill and the expenses of noting and protest. (Cf. *Willans v. Ayres*, 1877, 3 App. Cas. 133, 144, and judgments in *In re Gillespie, Ex parte Robarts*, 1886, 16 Q.B.D. 702, 13 Q.B.D. 286). Falconbridge, p. 569.

137. Transferrer by Delivery.—Where the holder of a bill payable to bearer negotiates it by delivery without endorsing it, he is called a “transferrer by delivery:”

2. **Liability of.**—A transferrer by delivery is not liable on the instrument. 53 V., c. 33, s. 58. Eng. s. 58.

No person is liable as endorser who has not signed the bill (sec. 131), but see sec. 138.

See sec. 2 as to “holder” and “delivery,” and sec. 21 as to “bill payable to bearer.”

As to negotiation, see sec. 60.

138. Warranty by—Genuineness—Right to transfer—“Bona fides.”—A transferrer by delivery who negotiates a bill thereby warrants to his immediate transferee, being a holder for value,—

(a) That the bill is what it purports to be;

(b) That he has a right to transfer it;

(c) That at the time of transfer he is not aware of any fact which renders it valueless.

The transferrer by delivery, although not liable on the instrument itself, may in certain cases, in the event of its dishonor, be liable on the consideration for which the bill has been transferred: *Merchants Bank v. Whidden*, 19 S. C. Can. 53 (1891). This is the case if the bill was given for an antecedent debt: *Mitchell v. Holland*, 16 S. C. Can. 687 (1889); or if the delivery was not intended to operate a full and final discharge of the liability of the transferrer. *Van Wart v. Wooley*, 3 B. & C. 446. Where a person changes blank notes or cashes a cheque payable to bearer to oblige the holder, he can recover the money if the bank has stopped payment or if the cheque is dishonored, *Conn. v. Merchants' Bank*, 30 U. C. C. P. 380 (1879); but in all the above cases the transferee, in order to hold the transferrer liable, must act with reasonable diligence in seeking to obtain payment, and in giving notice of dishonor or repudiating the transaction. *Poolcy v. Brown*, 1862, 31 L. J. C. P. 134.

Where two or more persons become parties to a bill to accommodate some third party, their rights and liabilities between themselves are those of co-sureties, and must be determined irrespective of the position of their names on the instrument. *Macdonald v. Whitfield* (1883), 8 App. Cas. 733. P. C. *Stacey v. Stayner*, 7 O. L. R. 684. In this latter case the plaintiff and defendant were both accommodation indorsers of a promissory note. The plaintiff was the payee, but, when the instrument was given to him to indorse, the defendant's name was already on the back of it, and the plaintiff indorsed under the defendant's endorsement. Each testified that his liability was to be secondary to that of the other—not that they so agreed with each other, but that the maker so agreed with each of them respectively:—*Held*, that, being sureties for the one debt, the rule of equitable contribution applied, and the plaintiff, having paid the debt, was entitled to recover only half of it from the defendant.

DISCHARGE OF BILL.

139. Payment.—A bill is discharged by payment in due course by or on behalf of the drawee or acceptor.

2. **Payment in due course.**—Payment in due course means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

3. **Accommodation Bill.**—Where an accommodation bill is paid

in due course by the party accommodated, the bill is discharged. 53 V., c. 33, s. 59. Eng. s. 59.

A bill may be discharged by payment, release, prescription, compensation or set-off, confusion, novation, by being merged in a security of a higher nature, such as a bond, mortgage or the like, and by judgment—the indebtedness on the bill being merged in the judgment.

A party to a bill may be released and discharged under the circumstances mentioned in sects. 96 and 142.

Form of Payment.—The holder of a bill is entitled to be paid in legal tender, which consists in Canada of British sovereigns and half sovereigns, United States Eagles and multiples and half of said Eagles, Dominion notes, Dominion silver to the amount of ten dollars and Dominion copper coins to the amount of twenty-five cents. The holder may, however, accept satisfaction in some other form than by way of legal tender. Anything which would operate as a discharge in the case of an ordinary contract to pay money is equally effectual in the case of a bill, and, as provided by sec. 142, a bill may even be satisfied in a manner which would not be sufficient in the case of ordinary contracts.

Amount of Payment.—If payment be made at maturity the full amount of the bill must be tendered, but if made thereafter it must also cover the damages specified in sect. 134. Part payment of a bill in due course operates as a discharge *pro tanto*.

Time of Payment.—Payment to operate as a discharge must be made at or after the maturity of the instrument, but premature payment or any other premature discharge is of course valid between the parties (Chalmers, p. 203). If payment be made before maturity the payer should see that the bill is delivered up. Payment by the drawee or acceptor before maturity operates as a mere purchase of the instrument, and, subject to sect. 142, if the form of the bill permit, it may be re-issued and further negotiated by the person paying. If premature payment is made by an indorser, he may wait until maturity to recover from other parties liable, or at once re-negotiate the bill. No payment can be forced before maturity, except in the Province of Quebec, when the debtor is insolvent or *en déconfiture*, *Lovell v. Meikle*, 2 L. C. R. 69, and then only against the debtor's estate, the other parties to the bill not becoming liable until maturity. Owing to compensation differing in Quebec from that of other Provinces, a bill transferred there after maturity would be subject to any money claim which the acceptor might have against any prior holder at or after maturity. (Maclaren.)

Place of Payment.—Payment must be made at the place indicated in the bill. When no place is specified, presentment for payment must be made in accordance with section 85. The indication of a bank as a place of payment by one of its customers is a sufficient authority to the bank to pay the bill, although not bound to do so in the absence of special agreement: *Roberts v. Tucker* (1851), 16 Q. B. 579.

Holders' Identity.—In England possession is *prima facie* evidence of identity. Cf. *Bulkeley v. Butler*, 2 B. & C., at p. 441: and if the payer doubts the identity of the person presenting, or the genuineness of the instrument, he must pay or refuse payment at his own risk (Chalmers, p. 203).

Renewal Bill.—When a renewal bill is taken the original one is not discharged, unless there is a special agreement to that effect. It is a mere conditional payment. So where the bill of a third party is taken. The remedy on the original bill is suspended until the

maturity of the new one. If that is paid or discharged, so is the original. If the new bill is dishonored, the original liability revives, except as to parties who are merely sureties, and who may have been discharged by the delay granted to the principal debtor (Mac-laren.)

Payment of Bills in a Set and Lost Bills.—See sects. 157 and 158, (5), (6).

Prescription.—The rights of the parties with regard to prescription are governed by the local laws of each province. In Quebec the time required is five years reckoned from maturity: C. C. Art. 2260 (4). The debt is then absolutely extinguished, and no action can be maintained after the delay for prescription is acquired: C. C. Art. 2267. In the other provinces of the Dominion, and in England, the time required for prescription is six years.

No indorsement of a bill or note made by a person receiving payment will take it out of the operation of the law relating to prescription: Art. 1229, Que. C. C.; R. S. Ontario, c. 123; R. S. Nova Scotia, c. 112; C. S. New Brunswick, c. 85. The debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and he and the creditor should sign it, but if this is not done, payment on account may be proved like any other fact.

No promise of acknowledgment is sufficient to prevent prescription unless in writing and signed by the party making the promise, R. S. O., R. S. N.S., and C. S. N.B., *supra* (unless the amount is under \$50.00, Que. C. C. Art. 1235). A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written without any such intention, but the promise of payment must not be repelled by any expressions in the acknowledgment.

No person is liable on account of the act or promise of his co-contractor or debtor, and one may be liable and may be sued without the other: R. S. O., R. S. N. S., and C. S. N. B., *supra*.

In Quebec, prescription cannot be renounced by anticipation, but time acquired may be renounced: C. C. Art. 2184. Renunciation by one person does not prejudice his co-debtors, his sureties or third persons: Art. 2229.

Time when Prescription commences to Run.—Prescription begins to run on bills and notes from the first day an action could be brought upon them. As regards the acceptor, time begins to run from the maturity of the bill, unless (1) presentment for payment is necessary in order to charge the acceptor, in which case time (probably) runs from the date of such presentment, sec. 165 (2); or (2), the bill is accepted after its maturity in which case time (probably) runs from the date of acceptance, section 23 (2). As regards a drawer or indorser, time (generally) begins to run from date when notice of dishonor is received: *Cf. Castrique v. Barnabo* (1884), 6 Q. B. 498, and section 81. When an action is brought against a party to a bill to enforce an obligation collateral to the bill, though arising out of the bill transaction, the nature of the particular transaction determines the period from which time begins to run: *Chalmers*, p. 292. Time does not run with respect to debts depending on a condition until the condition happens, or on debts with a term until the term has expired: Art. 2236, Que. C. C.

In Quebec, prescription runs against absentees, Art. 2232: also against married women, minors, idiots and insane persons, saving their recourse against those who legally represent them, Arts. 2234, 2269 C. C.; but in all other provinces, prescription only commences to run from the date of the return of the absentee, and

in the case of minors, idiots and other incapable persons from the time of the removal of the impediment. The Ontario Revised Statutes, ch. 60, provide, however, that time shall run in favor of a joint debtor, although one or more of the joint debtors may be out of the Province.

Any one or more of the following prescriptions may be invoked in Quebec:—(1) Any prescription entirely acquired under a foreign law, on a bill payable outside of Quebec, in favor of a person living abroad. (2) Any prescription entirely acquired in Quebec, reckoned from maturity, on a bill payable there, when the party was domiciled there at maturity; in other cases from the time he became domiciled there. (3) Any prescription resulting from the lapse of successive periods in the preceding cases, when the first period elapsed under the foreign law: Art. 2190. The court cannot of its own motion supply the defence resulting from prescription except in cases where the right of action is denied: Art. 2188. See MacLaren.

For a definition of an accommodation party and his liabilities, see section 55, and see sections 70 and 73.

Though the right of action on the bill is discharged, the accommodation acceptor has a personal right of action for indemnity (Chalmers, p. 199), and prescription only commences to run in favor of the drawer from the time the accommodation acceptor paid the money due on the bill. If several persons endorse a bill or note for the accommodation of the acceptor or maker, and one of them pays it, the whole circumstances attendant upon its making, issue and transference may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it, and reasonable inferences from these facts and circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. See *Macdonald v. Whitfield*, 8 App. Cas. 733 (1883).

Where an action against the indorser of a note had been dismissed, on the ground that he had indorsed for the accommodation of the plaintiffs, this was held to be an answer to an action seeking to hold him responsible as a partner by estoppel in the firm which made the note: *Ray v. Isbister* (1896), 26 S. C. Can.

140. Payment by Drawer or Endorser—Gives Rights—Second Negotiation.—Subject to the provisions aforesaid as to an accommodation bill, when a bill is paid by the drawer or an endorser, it is not discharged: but—

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not re-issue the bill:

(b) Where a bill is paid by an endorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is re-mitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent endorsements, and again negotiate the bill. 53 V., c. 33, s. 59. Eng. s. 59.

A bill is discharged by payment in due course by or on behalf of the drawee or acceptor, or, in the case of an accommodation bill, by the party accommodated (sec. 139). In either of these cases the payment which discharges the bill is that of the party ultimately liable. But except as aforesaid a bill is not discharged by payment by the drawer or an endorser. The endorser, or, where the bill is payable to the drawer's order, the drawer, who pays the bill, is

remitted to his former rights as against the acceptor or antecedent parties. He may sue the acceptor and the parties antecedent to himself, or he may strike out his own and the subsequent endorsements and again negotiate the bill (*Callow v. Lawrence*, 1814, 3 M. & S. 95; cf. notes to sec. 67) and the payment by the drawer will be no answer to the holder's action against the acceptor. *Jones v. Broadhurst*, 1850, 9 C.B. 173.)

141. Acceptor holding at maturity.—When the acceptor of a bill is or becomes the holder of it, at or after its maturity, in his own right, the bill is discharged. 53 V., c. 33, s. 60. Eng. s. 61.

Whenever the acceptor or maker of a bill or note is discharged, all the other parties are discharged, and the instrument ceases to be a bill or note. If the acceptor becomes the holder of the bill before its maturity, it is not discharged, and he may re-issue and further negotiate it; but he is not entitled to enforce payment of it against any intervening party to whom he was previously liable, section 73, if he becomes holder at maturity in the capacity of executor, administrator, trustee, assignee, tutor, curator or the like, the bill is not discharged. He must hold the bill "in his own right." (*Mac-laren*).

If a bill accepted by two or more joint acceptors is held by one of them at or after maturity, it is discharged; but such acceptor does not thereby lose his recourse or right of contribution against his co-acceptors: *Harmer v. Steele*. 4 Ex. 1 (1849).

142. Renouncing rights.—When the holder of a bill, at or after its maturity, absolutely and unconditionally renounces his rights against the acceptor, the bill is discharged.

2. Against one party.—The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity.

3. Writing.—A renunciation must be in writing, unless the bill is delivered up to the acceptor.

4. Holder in due course.—Nothing in this section shall affect the rights of a holder in due course without notice of renunciation. 53 V., c. 33, s. 61. Eng. s. 62.

The best kind of writing would be a memorandum on the bill signed by the holder relinquishing all claim against a party named, for this would be notice to anyone afterwards taking the bill, if still current.

The bill is discharged only when the renunciation by the acceptor is at or after maturity, and when it is absolute and unconditional. See *re George Francis v. Bruce*, 44 Ch. D. 627 (1890). A bill or note payable at demand is "at maturity" immediately on its being made, and the holder in desiring to renounce all rights in it, when delivering it to any person other than the acceptor, must make his renunciation in writing: *Edwards v. Walters*, W. N., Feb. 15, 1896, p. 15.

Where there is a payment of a sum less than the amount of the bill, the bill may, in Quebec and Ontario, be discharged under the provisions of the present section; or it may be considered as discharged by payment under section 139.

143. Cancellation of Bill.—Where a bill is intentionally cancelled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

2. Of any signature.—In like manner, any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent.

3. Discharge of endorser.—In such case, any endorser who would have had a right of recourse against the party, whose signature is cancelled is also discharged. 53 V., c. 33, s. 62. Eng. s. 63.

As to striking out endorsements, cf. notes to sec. 67.
Cf. sec. 144.

144. Unintentional Cancellation.—A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative: Provided that where a bill or any signature thereon appears to have been cancelled, the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority. 53 V., c. 33, s. 62. Eng. s. 63.

If a banker cancel a bill by mistake, without any want of due care, he does not incur any liability; but if there is negligence, and any loss result therefrom, he may be held liable: *Bank of Scotland v. Dominion Bank, Toronto* (1891), A. C. 592.

145. Alteration of Bill—Holder in due course.—Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is voided, except as against a party who has himself made, authorized, or assented to the alteration and subsequent endorsers: Provided that where a bill has been materially altered but the alteration is not apparent, and the bill is in the hands of a holder in due course such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor. 53 V., c. 33, s. 63. Eng. s. 64.

As to what alterations are material, see sec. 146.

As to holder in due course, see sec. 56.

The word "apparent" in the proviso means an alteration which can be discerned by the holder. (*Cunnington v. Peterson*, 1898, 29 O.R. 346, dissenting from the dictum of Denman, J., in *Leeds & County Bank v. Walker*, 1883, 11 Q.B.D. at p. 90 to the effect that an alteration is apparent if the person sought to be made liable can at once discover by some incongruity on the face of the bill, and point out to the holder that it is not what it was, that is to say that it has been materially and fraudulently altered, even if the alteration is not an obvious one to all mankind). Cf. *Maxon v. Irwin*, 1907, 15 O.L.R. 81, 87.

146. Material—Date—Sum—Time—Place—Adding places.—In particular any alteration,—

- (a) of the date;
- (b) of the sum payable;
- (c) of the time of payment;
- (d) of the place of payment;
- (e) by the addition of a place of payment without the acceptor's assent where a bill has been accepted generally, is a material alteration. 53 V., c. 33, s. 63. Eng. s. 64.

As to the cases in which material alteration will make a bill void, see sec. 145.

Sec. 146 is not exhaustive.

An alteration is material which in any way alters the operation of the bill and the liabilities of the parties, whether the change be prejudicial or beneficial, or which would alter its effect if used for business purposes: *Carrique v. Beaty*, 24 Ont. A. R. 302 (1897).

The following alterations in bills and notes have been held to be material:—Alteration of the date. *Meredith v. Culver*, 5 U. C. Q. B.

218 (1848); alteration of the sum payable, *Halcrow v. Kelly*, 28 U. C. C. P. 551 (1878); alteration of the time of payment, *Mereuith v. Culver*, *supra*; alteration of the place of payment, *McQueen v. McIntyre*, 30 U. C. C. P. 426 (1879); adding a place of payment, *Calvert v. Baker*, 4 M. and W. 417 (1838); making a "joint" note, "joint and several," *Samson v. Yager*, 4 U. C. O. S. 3 (1834); by striking out or clipping off a condition indorsed, *Campbell v. McKinnon*, 18 U. C. Q. B. 612 (1859); by adding "or order" to make the note negotiable, *Lawton v. Millidge*, 4 N. B. (2 Kerr), 520 (1844), but see *contra Byron v. Thompson*, 11 A. and E. 31 (1839); by adding a new maker after issue, *Reid v. Humphrey*, 6 Ont. A. R. 403 (1881); erasing the signature of one or two joint makers, *Nicholson v. Revill*, 4 A. and E. 675 (1836); changing "I" to "We," *Draper v. Wood*, 112 Mass. 315 (1873); changing "order" to "bearer," *re Commercial Bank*, 10 Man. 171 (1894).

The following alterations have been held not to be material :

Inserting the word "months" where inadvertently omitted, *Laine v. Clarke*, 3 Rev. de Leg. 434 (1816); writing the words "pour aval" over the signature of the first indorser, when he had in fact indorsed the note above the payee, and as an "aval," *Abbott v. Wurtete*, Q. R., 6 S. C. 204 (1894); a memorandum at the foot declaring the note to be payable at a particular place, *Cunard v. Tozer*, 4 N. B. (2 Kerr) 365 (1844); changing the name of the drawees from S. C. & Co. to S. & Co., their proper firm name, *Farquhar v. Southey*, 1 M. and M. 14 (1826); adding "on demand" where no due time was mentioned, *Aldous v. Cornwell*, L. R., 3 Q. B. 573 (1868); inserting the dollar mark before the numerals, *Houghton v. Francis*, 29 Ill. 244 (1862); correcting a name incorrectly written, *Cole v. Hills*, 44 N. H. 227 (1863); *Derby v. Thrall*, 44 Vt. 413 (1872); adding an erroneous due date to a bill, *Fanshawe v. Peet* (1857), 26 L. J. Ex. 314; the striking out of the words "or order" by the acceptor in the case of a bill payable to D." "or order," *Decroix v. Meyer* (1890), 25 Q. B. D. 343 C. A.

The plaintiff's claim was on a note made by the defendant payable to the plaintiffs at three months after date. When produced in Court the words "Extended to November 28th, '02," were found written in the lower left hand corner of the note with the initials W. H. R. below. These added words were in the handwriting of Mr. Riddell, the secretary of the plaintiff company. The defendant denied all knowledge of or assent to the extension:—Held, that the words added were more than a mere memorandum giving time for payment, and must be read into the note, and had the effect of changing the note from one at three months to one at four months, and being thus a material alteration the note became void in the hands of the plaintiffs as against the defendants.

Mutual Life Assurance Co. v. McLaughlin, 39 C. L. J. 630. See also, *La Banque Provinciale v. Charbonneau*, 6 O. L. R. 302.

There are, however, two cases in which an alteration in a material part will not vacate the instrument: (1) where such alteration is made before the bill or note is issued or becomes an available instrument, and (2) where the bill is altered to correct a mistake, and in furtherance of the original intention of the parties: *Brutt v. Piccard* (1824), R. & M. 37.

Subject to two exceptions, the holder of a bill, which has been avoided by a material alteration, cannot sue on the consideration in respect of which it was negotiated to him: *Alderson v. Langdale* (1832), 3 B. and Ad. 660.

Exception 1. If the bill was negotiated to him after the alteration was made, and he was not privy to the alteration, he may sue on the consideration: *Burchfield v. Moore* (1854), 23 L. J. Q. B. 261.

Exception 2. If the bill was altered while in his custody or under his control, he can still recover, provided (a) that he did not intend to commit a fraud by the alteration. *Hunt v. Gray* (1871), 10 Amer. R. 232, and (b) that the party sued would not have had any remedy over on the bill if it had not been altered (Chalmers, p. 217).

Whether an alteration is material or not is a question of law.

Acceptance and Payment for Honour.

147. Acceptance for Honour "supra" Protest.—Where a bill of exchange has been protested for dishonour by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest, for the honour of any party liable thereon, or for the honor of the person for whose account the bill is drawn. 53 V., c. 33, s. 64. Eng. s. 65.

As to dishonour by non-acceptance, see sec. 81, and as to protest generally see secs. 113 and 114. As to protest for better security, see sec. 116.

As to the liability of the acceptor for honour, see sec. 152.

The holder may refuse to allow an acceptance for honour. He may desire to exercise his immediate right of recourse against the drawer and endorsers (sec. 82). If a referee in case of need is named in the bill, it is in the option of the holder to resort to him or not, as the holder may think fit (sec. 33).

As to the form of acceptance for honour, see sec. 151.

148. In part.—A bill may be accepted for honour for part only of the sum for which it is drawn. 53 V., c. 33, s. 64. Eng. s. 65.

An ordinary acceptance to pay part only of the amount for which the bill is drawn is a qualified acceptance (sec. 38), which the holder may refuse to take (sec. 83).

149. Deemed to be for Honor of Drawer.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. 53 V., c. 33, s. 64. Eng. s. 65.

Cf. notes to sec. 151.

150. Maturity of after sight bill.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of protesting for non-acceptance, and not from the date of the acceptance for honor. 53 V., c. 33, s. 64. Eng. s. 65.

Cf. sec. 45.

151. Requirements—Writing—Signature.—An acceptance for honour *supra* protest, in order to be valid, must,—

(a) be written on the bill, and indicate that it is an acceptance for honour; and

(b) be signed by the acceptor for honour. 53 V., c. 33, s. 64. Eng. s. 65.

It is sufficient if the acceptor for honour merely writes "accepted for honour," or "accepted S. P." on the bill and signs his name underneath; but it is usual for him to state for whose honour he accepts. Chalmers, p. 230.

If the acceptance does not expressly state for whose honour it is made, it is deemed to be an acceptance for the honour of the drawer (sec. 149).

152. Liability of Acceptor for Honor.—The acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts:

2. **To Holder and Others.**—The acceptor for honour is liable to the holder and to all parties to the bill subsequent to the party for whose honour he has accepted. 53 V., c. 33, s. 65. Eng. s. 66.

Cf. secs. 117 to 119.

As to presentment for payment to the acceptor for honour, see sec. 94.

It seems an acceptor for honour is bound by the estoppels which bind an ordinary acceptor, and also by the estoppels which would bind the party for whose honour he accepted; as to which see secs. 129, 130 and 133. Chalmers, p. 232, citing *Phillips v. im Thurn*, 1866, L.R. 1 C.P. at p. 471.

153. Payment for Honor *supra* Protest.—Where a bill has been protested for non-payment, any person may intervene and pay it *supra* protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn:

2. **If more than one offer.**—Where two or more persons offer to pay a bill for the honour of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

3. **Refusal to receive payment.**—Where the holder of a bill refuses to receive payment *supra* protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

4. **Entitled to bill.**—The payer for honour, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonour, is entitled to receive both the bill itself and the protest.

5. **Liability for refusing.**—If the holder does not on demand in such case deliver up the bill and protest, he shall be liable to the payer for honour in damages. 53 V., c. 33, s. 67. Eng. s. 68.

When a bill has been paid *supra* protest it ceases to be negotiable: *Ex-parte Swan* (1868), L. R., 6 Eq. 344, Noughier, sec. 1026 and Pothier Nos. 113, 114.

As to the rights required by payment for honour *supra* protest, see sec. 155. The payment must be attested by a notarial act of honour (sec. 154).

The "protest" referred to in sub-sec. 4 means the protest for non-payment by the acceptor, and not protest for better security. The expense of protest for better security being a voluntary act for the benefit of the holder (sec. 116) is not chargeable against the acceptor. (In re English Bank. *Ex parte* Bank of Brazil, (1893) 2 Ch. 438, 444).

154. Attestation of Payment for Honour.—Payment for honor *supra* protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor, which may be appended to the protest or form an extension of it.

2. **Declaration.**—The notarial act of honour must be founded on a declaration made by the payer for honour, or his agent in that behalf, declaring his intention to pay the bill for honour, and for whose honour he pays. 53 V., c. 33, s. 67. Eng. s. 68.

155. Discharge. — Subrogation. — Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of the holder as regards the party for whose honor he pays, and all parties liable to that party. 53 V., c. 33, s. 67. Eng. s. 68.

If the holder is a holder in due course, or if any party to the bill subsequent to the party for whose honor the bill has been paid was a holder in due course, the payer for honor acquires their right in this respect. Among the duties to which the payer for honor succeeds is that of giving notice of dishonor: *Goodhall v. Polhill*, 14 L. J. C. P. 145 (1845).

Lost Instruments.

156. Holder to Have Duplicate of Lost Bill.—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again:

2. Refusal.—Compulsion.—If the drawer, on request as aforesaid, refuses to give such duplicate bill, he may be compelled to do so. 53 V., c. 33, s. 68. Eng. s. 69.

157. Action on lost Bill—Indemnity.—In any action or proceeding upon a bill, the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity is given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question. 53 V., c. 33, s. 69. Eng. s. 70.

The loss or destruction of the bill does not relieve from the duty of demanding payment. A copy should be presented in accordance with sec. 85. This should be accompanied by an offer of indemnity, and if payment is refused, protest may be made on the copy or written particulars, sec 112, and notice of dishonor must be given. Neglect to offer indemnity to the maker or acceptor on demand of payment does not deprive the payee of his right of action, but it will prevent him from recovering costs, and will compel him to bear any special damages resulting from the neglect on his subsequent suit: 2 Daniel, sec. 1465. See *Thackray v. Blackett*, 3 Camp. 164 (1812).

The holder of a lost note cannot maintain an action for its amount by offering merely to reimburse the maker if it should be found. He should offer to give security that the maker should not be troubled by the note. This rule applies as well to the case of a non-negotiable note merely mislaid.

Pillow & Hersey Co. v. L'Esperance, Q. R., 22 S. C. 213 (Ct. Rev.).

BILL IN A SET.

158. Bills in set.—Where a bill is drawn in a set, each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constitute one bill.

2. Acceptance.—The acceptance may be written on any part and it must be written on one part only. 53 V., c. 33, s. 70. Eng. s. 71.

If one part of a set omit reference to the other parts, it becomes a separate bill in the hands of a holder in good faith., Chalmers, p. 238.

159. Endorsing more than one part.—Where the holder of a set endorses two or more parts to different persons, he is liable on every such part, and every endorser subsequent to him is liable on the part he has himself endorsed as if the said parts were separate bills.

2. Negotiation to different holders.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed the true owner of the bill: Provided that nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

3. More than one part accepted.—If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

4. Part accepted.—Payments without delivery.—When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

5. Discharge.—Subject to the provisions of this section, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged. 53 V., c. 33, s. 70. Eng. s. 71.

CONFLICT OF LAWS.

Conflict of laws may arise between two or more provinces of the Dominion, and doubtless the word "country," as used in sec. 160, includes province.

As between different provinces, a conflict of laws may arise: (1) in regard to the provisions of the Act which create special rules for the Province of Quebec, e. g., as to non-judicial days (see secs. 43 and 164) or protest (see secs. 114 and 162); and (2) in regard to matters not expressly or impliedly provided for by the Act and not governed by the law merchant within sec. 10. Such matters include the law relating to capacity, limitations and prescriptions, set off and compensation, evidence, principal and surety, joint and several liability, illegality, payment and discharge. Cf. Falconbridge, pp. 598 *et seq.*, where the subject of Conflict of Laws is discussed very fully.

160. Requisites of form.—Unstamped bill.—Conforming to the law of Canada.—Where a bill drawn in one country is negotiated, accepted or payable in another, the validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or endorsement, or acceptance *supra* protest, is determined by the law of the place where the contract was made: Provided that,—

(a) where a bill is issued out of Canada, it is not invalid by reason only that it is not stamped in accordance with the law of the place of issue;

(b) where a bill, issued out of Canada, conforms, as regards requisites in form, to the law of Canada, it may, for the purpose of

enforcing payment thereof, be treated as valid as between all persons who negotiate, hold or become parties to it in Canada. 53 V., c. 33, s. 71. Eng. s. 72.

The Bills of Exchange Act does not deal with the consequences which are to flow from the character which it attaches to the promise which a bill or note contains; and, therefore, these consequences fail to be determined according to the law of the Province in which the liability is sought to be enforced.

Cook v. Dodds, 6 O. L. R. 608.

An action on promissory notes dated at one place but signed in another cannot, in the absence of other circumstances conferring jurisdiction, be brought in the district in which the notes were dated.

Cardinal v. Picher, 7 Que. P. R. 147.

Form of Bill.—Chalmers, p. 239, illustrates the effect of subsection (a) by the following cases:—

(1) A bill drawn and payable in France expresses no value received, and is therefore invalid according to French law. If it is indorsed in England, the indorser could be sued there (*Cf. Wynne v. Jackson* [1826], 2 Russ. 351 and 634), though the drawer could not.

(2) By the law of Illinois a verbal acceptance is valid. A bill drawn in London on a town in Illinois is verbally accepted there. The acceptance is valid (*Cf. Scudder v. Union Bank* [1875], 1 Otto, Sup. Ct. U. S. 406).

Capacity.—Where there is a conflict of different laws on this question the general rule, as stated in the notes to sect. 47, is that it is governed by the law of the domicile. The Act has no provision on this question of conflict, unless such a wide meaning should be given to the word "interpretation" in clause (b) of this section (Maclaren), and it would be straining the meaning of that word to make it include capacity (Lafleur, p. 184).

Completion of Contract.—The different contracts of the drawer, acceptor and indorser of a bill are only complete upon delivery, and the contract is made in each case where this is affected, not where the signature is attached, *Chapman v. Cottrell*, 34 L. J. Ex. 186 (1865); but the presumption is that a bill is issued, indorsed and delivered at the place where it bears date, and accepted at the place where the drawee is addressed unless there is something to show that the contract was, in fact, made at some other place (Maclaren).

Contracts that will not be enforced.—Contracts immoral, or contrary to the law of nations, or injurious to British public interests, though valid where made, will not be enforced on behalf of a guilty party in our courts: Byles, 14th ed., p. 385. The reason is that the laws of foreign countries are admitted in our Courts not *proprio vigore* but *ex comitate*.

161. "Lex loci."—**Law of Canada.**—Subject to the provisions of this Act, the interpretation of the drawing, endorsement, acceptance or acceptance *supra* protest of a bill, drawn in one country and negotiated, accepted or payable in another, is determined by the law of the place where such contract is made: Provided that where an inland bill is endorsed in a foreign country, the endorsement shall, as regards the payer, be interpreted according to the law of Canada. 53 V., c. 33, s. 71. Eng. s. 72.

An inland bill is a bill which is, or on the face of it purports to be, (a) both drawn and payable within Canada, or (b) drawn within Canada upon some person resident therein (sec. 25).

The rule of private international law, that the validity of a transfer of movable chattels must be governed by the law of the

country in which the transfer takes place, applies to the transfer of bills by endorsement (*Embiricos v. Anglo-Austrian Bank* (1905), 1 K.B. 677, following *Alcock v. Smith* (1892), 1 Ch. 238, as a decision to that effect).

This proposition is independent of sec. 161, unless the word "interpretation" in the section means the "legal effect" of the endorsement ([1905] 1 K.B. at p. 685). Cf. *Sanders v. St. Helens*, 1906, 39 N.S.R. 370; *London, etc., Bank v. Maguire*, 1895, Q. R., 8. S. C. 358; *Falconbridge*, p. 602.

162. Law as to duties of holder.—The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonour, are determined by the law of the place where the act is done or the bill is dishonoured. 53 V., c. 33, s. 71. Eng. s. 72.

The drawer of the bill, and each endorser, contracts with the next following party to pay him on due notice of dishonour being given; and such notice must be measured by the law of the contract, whenever no question arises about the formalities to be observed in a particular place. Sec. 162 must be interpreted as applying only to the *last* holder. The words "or is not done" must be understood after the word "done" in the section. *Westlake*, p. 295. As to *Quebec*, cf., sec. 114.

163. Currency.—Where a bill is drawn out of but payable in Canada, and the sum payable is not expressed in the currency of Canada, the amount shall, in the absence of some express stipulations, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable. 53 V., c. 33, s. 71. Eng. s. 72.

164. Due Date.—Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable. 53 V., c. 33, s. 71. Eng. s. 72.

Lex Loci Solutionis.—The law of the place of payment has also been applied to determine interest on a bill dishonored by non-payment: *re Commercial Bank of South Australia*, 36 Ch. D. 522 (1887), section 134.

Discharge.—The present rule is that a defence or discharge, good by the law of the place where the contract is made or is to be performed, is to be held to be of equal validity in every place where the question may come to be litigated. In England and America the same rule has been adopted, and acted on with a most liberal justice. Story on Conflict of Laws, secs. 331 and 332. A bill discharged in Quebec by either compensation or prescription would be held to be discharged in other countries where these would not operate as discharges as to bills made or payable there. See *Harris v. Juine*, L. R., 4 Q. B. 653 (1869); *Story*, sec. 582.

Locus Fori.—The law of the place where the action is brought or proceedings are taken governs as to all matters belonging to the remedy or mode of enforcement: *De la Vega v. Vienna*, 1 B. & Ad. 284 (1830); Under this head are comprised.—(1) The limitation of actions subject to the operation of the law in places like Quebec, when it operates as a discharge; (2) set-off, subject to the same limitations, and (3) the admission of evidence.

Proof of Foreign Law.—When a question arises as to the law of a foreign country, it must be pleaded and proved as a fact in the case by competent witnesses: *Westlake*, p. 364; *Lafleur*, p. 23; *Con-*

cha v. Murietta (1890), 40 Ch. D., 543 C. A. It is usual to state what the foreign law is, and then to allege the acts, bringing the case within that foreign law: Byles, 14th ed., p. 392. In the absence of allegation and proof of the foreign law, it is presumed to be similar to that of the *locus fori*.

PART III.

CHEQUES ON A BANK.

165. Cheque defined.—A cheque is a bill of exchange drawn on a bank, payable on demand.

2. Provisions as to bills apply.—Except as otherwise provided in this Part, the provisions of this Act applicable to a bill of exchange payable on demand apply to a cheque. 53 V., c. 33, s. 72. Eng. s. 73

A cheque under the Act is drawn upon a bank (i.e., an incorporated bank or savings bank carrying on business in Canada: see sec. 2).

If this section is read with sec. 17, which defines a bill of exchange, a cheque may be said to be defined by the Act as "an unconditional order in writing addressed to a bank, signed by the person giving it, requiring the bank to pay on demand a sum certain in money to or to the order of a specified person, or to bearer."

A cheque must be payable on demand (i. e., expressed to be payable on demand or on presentation, or in which no time for payment is expressed: sec. 23).

As to the other elements of the definition, see notes to sec. 17.

Being a bill payable on demand, a cheque is not entitled to days of grace (sec. 42).

A bank which has sufficient funds in its hands belonging to its customer is liable to him if it dishonours his cheque, whereas the drawee of a bill, in the absence of contract, is not bound to accept, or, in the case of a demand bill, to pay, a bill drawn upon him, even if he has sufficient funds of the drawer in his hands. (Cf. Goodwin v. Roberts, 1875, L. R. 10 Ex. at p. 351.)

The holder in the case of either a bill or cheque would have his recourse against the drawer (sec. 95), subject to the necessity of giving due notice of dishonour (sec. 96).

If the drawer of a cheque had not sufficient funds at the bank to meet the cheque, notice of dishonour would be dispensed with (sec. 107). It has been held that protest in Quebec is unnecessary as against the drawer of a cheque where the cheque has not been paid by reason of the failure of the bank. (*Banque Jacques Cartier v. Limoulu*, 1899, Q.B. 17 S.C. at p. 224; cf. *De Serres v. Enard*, 1899, Q. R. 17 S.C. 199.)

Notice of death of a customer who has drawn a cheque upon a bank, terminates the bank's authority to pay the cheque (sec. 167); the death of the drawer of a bill usually has no effect upon the duties of the parties to the bill (see notes to sec. 127).

Under the Canadian Act a cheque and a bill of exchange are in the same position as regards payment upon a forged or unauthorized endorsement, except that clause (b) of the proviso to sec. 49 contains a special provision applicable to cheques alone. The protection to a paying banker afforded by sec. 60 of the English Act is not available to a bank in Canada; see notes to secs. 49 and 50, *supra*.

If a cheque is certified or marked "good" by the drawee bank at the request of the payee or holder, the amount of the cheque being charged from all liability either on the cheque or on the original holder does not there and then require payment, the drawer is discharged from all liability either on the cheque or on the original consideration for which it was given (*Boyd v. Nazsmith*, 1889, 17 O. R. 40; *Banque Jacques-Cartier v. Limoilou*, 1899, Q. R. 17 S. C. 211; *Re Commercial Bank, Banque d'Hochelaga's Case*, 1894, 10 Man. R. 171).

But in the case of a cheque certified before delivery, no presentment at the time of the certification is made by the payee or holder who alone is entitled to present the cheque for payment, and therefore he cannot be said to have elected to accept the bank's undertaking to pay in place of actual payment. He is still entitled to present for payment and, if he so desires, to receive the money. *Cf. Gaden v. Newfoundland Savings Bank*; and see *Falconbridge*, pp. 611 *et seq.*

166. Presentment for Payment—Measure of Damages—Holder becomes Creditor.—Subject to the provisions of this Act,—

(a) where a cheque is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment, as between him and the bank, to have the cheque paid, and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such bank to a larger amount than he would have been had such cheque been paid;

(b) the holder of such cheque, as to which such drawer or person is discharged, shall be a creditor, in lieu of such drawer or person, of such bank to the extent of such discharge, and entitled to recover the amount from it.

2. Reasonable Time.—In determining what is a reasonable time, within this section, regard shall be had to the nature of the instrument, the usage of trade and of banks, and the facts of the particular case. 53 V., c. 33, s. 73. Eng. s. 74.

The drawer of a cheque is in a different position from the drawer of a bill in respect to presentment for payment.

The drawer of a bill payable on demand is discharged if it is not presented for payment within a reasonable time after its issue (sec. 86); the drawer of a cheque in such a case is discharged only if he had the right at the time of presentment as between him and the bank to have the cheque paid and suffers actual damage through the delay, and only to the extent of such damage (sec. 166).

If the drawer does not suffer damage by the delay, the holder may present a cheque within any period not exceeding the period of limitation of action or prescription.

Clause (b) of this section has adopted the principle of the civil law and modifies the general rule of sec. 127 that a cheque does not operate as an assignment of funds in the hands of the bank. If the drawer is discharged under clause (a), the holder may recover from the bank, *i. e.*, out of the drawer's funds, to the extent to which the drawer is discharged. (*Banque Jacques-Cartier v. Limoilou*, 1899, Q.R. 17 S. C. at pp. 222-3). The liability is in the alternative. The drawer and the bank are not liable jointly and severally. (*Ibid.*)

If the drawer had no funds to his credit, but was authorized to overdraw to the amount of the cheque, the drawer would probably

still be discharged, but the holder could not prove against the estate of the bank.

Sub-sec. 2 perhaps introduces a new and less rigorous measure of reasonable time. The common law rule is stated by Chalmers (p. 251), as follows:—

(1) If the person who receives a cheque and the banker on whom it is drawn are in the same place the cheque must, in the absence of special circumstances (*Firth v. Brooks*, 1861, 4 L. T. N. S. 467), be presented for payment on the day after it is received. (*Alexander v. Burchfield*, 1842, 7 M. & Gr. 1061).

(2) If the person who receives a cheque and the banker on whom it is drawn are in different places, the cheque must, in the absence of special circumstances, be forwarded for presentment on the day after it is received, and the agent to whom it is forwarded must, in like manner, present it or forward it on the day after he receives it. (*Hare v. Henty*, 1861, 30 L.J.C.P. 302; *Prideaux v. Criddle*, 1869, L.R. 4 Q.B. 455; *Heywood v. Pickering*, 1874 L.R. 9 Q.B. 428.)

(3) In computing time non-business days must be excluded (sec. 6); and when a cheque is crossed, any delay caused by presenting the cheque pursuant to the crossing is probably excused. (Cf. *Alexander v. Burchfield*, 1842, 7 M. & Gr. at p. 1067; since this case the crossing of cheques has received legislative sanctions).

The question of reasonable time for the purposes of sec. 166 must be distinguished from the question of reasonable time under other sections of the Act. By sec. 70 a bill payable on demand is deemed to be overdue, so that it can be negotiated only subject to any defect of title affecting it at its maturity, when it appears to have been in circulation for an unreasonable length of time; see notes to that section as to cheques. Cf., also, sec. 77, which is applicable only to bills payable at sight or after sight. *Falconbridge*, p. 617.

167. Authority to Pay—Countermand—Death.—The duty and authority of a bank to pay a cheque drawn on it by its customer, are determined by,—

(a) countermand of payment;

(b) notice of the customer's death. 53 V., s. 33, s. 74. Eng. s. 75

The relations of banker and customer in respect of cheques may be summarized as follows (Chalmers, p. 251):

(1) In the absence of special contract, the relations between a banker and his customer are those of debtor and creditor; and in addition the customer is entitled to draw cheques on the banker to the extent of the sum for which he is a creditor. *Re Agra Bank* (1866), 36 L. J., ch. 151.

(2) Subject to the exceptions above noted, where a cheque is presented for payment and dishonored, and the banker has in his hands at the time funds to the credit of his customer sufficient to meet it, the banker is liable to his customer in damages, *Todd v. Union Bank*, 4 Man. R. 204 (1887), unless the requisite funds were paid in so short a time before the dishonor of the cheque that the banker could not with the exercise of reasonable diligence have ascertained the state of accounts between them: *Whitaker v. Bank of England* (1835), 1 C. M. & R. 749-750. The damages recoverable by a non-trader for the wrongful refusal of a bank to allow him to withdraw a special deposit are nominal or limited to interest on the money: *Henderson v. Bank of Hamilton*, 25 O. R. 641 (1894). (*Mac-laren*).

(3) A bank may, without special instructions, pay any bills or notes of which the customer is acceptor or maker, and which are payable at the bank: *Jones v. Bank of Montreal*, 29 U. C. Q. B. 448 (1869); *Vagliano v. Bank of England* (1891), A. C. 107.

(4) In the absence of special directions from the customer, it is the duty of the banker to pay the customers' cheques in the order in which they are presented, irrespective of their dates, provided the date is not subsequent to the presentment: *Kilsby v. Williams* (1822), 5 B. & Ald. 819.

(5) Where a customer keeps his account at one branch of a bank, other branches are not bound to honor his cheques: *Woodland v. Fear* (1857), 7 E. & B. 519. But if he has accounts in two or more branches the bank may combine them against him, provided they are all in the same right. A personal and a trust account cannot be combined. See the whole status of branch banks in regard to bills discussed by the Privy Council in the case of *Prince v. Oriental Bank* (1878), 3 App. Cas. 325. Cf. *Garnett v. McKewan*, T. R. 8 Ex. 10.

Countermand.—A customer may stop payment of a cheque before it is accepted, but not after: *McLean v. Clydesdale Bank*, 9 A. C. 95 (1883). It has also been held that a bank is not bound to honor a customer's cheque after a garnishee order is served on it, even although the balance exceed the judgment: *Rogers v. Whiteley* (1892), A. C. 118. Authority to pay the customer's cheque would also be revoked by notice of his insolvency. *Rogers v. Whiteley supra*. As to countermand by telegram. See *Curtice v. London, etc., Bank*, (1908), 1 K.B., 293.

Death of a Customer.—Payment after the death but before notice is valid. *Rogerson v. Ladbroke*, 1 Bing. 93 (1822). It has been held in England that, after the death of a partner, the surviving party may draw cheques upon the partnership account. *Backhouse v. Charlton*, 8 Ch. D. 444 (1878). In Quebec the death of a partner terminates the partnership, and also the right of the survivors to act for the firm, in the absence of a special agreement to the contrary: C. C. 1892, 1897.

Overdraft.—In the absence of special agreement, express or implied, founded on consideration, a banker is, of course, under no obligation to let a customer overdraw. As to implied agreement, see *Armfield v. London & Westminster Bank* (1883), 1 C. & E. 170; as to presumption, see *Ritchie v. Clydesdale Bank* (1886), 13 Sess. Cas. 114. As to the general duty of a bank not to disclose the state of a customer's account without good reasons. See *Hardy v. Veasey* (1868), L. R., 3 Ex. 107.

A cheque on payment becomes the property of the drawer, *R. v. Watts* (1850), 2 Den. C. C. 15, but the banker who pays it is entitled to keep it as a voucher until his account with his customer is settled: Cf. *Charles v. Blackwell* (1877), 2 C. P. D. 162 C. A.

CROSSED CHEQUES.

168. Definition—General.—Where a cheque bears across its face an addition of,—

(a) The word "bank" between two parallel transverse lines, either with or without the words "not negotiable;" or—

(b) Two parallel transverse lines simply, either with or without the words "not negotiable;"

Such addition constitutes a crossing, and the cheque is crossed generally;

2. **Special.**—Where a cheque bears across its face an addition of the name of a bank, either with or without the words “not negotiable,” that addition constitutes a crossing and the cheque is crossed specially and to that bank. 53 V., c. 33, s. 75. Eng. s. 76.

Although the provisions of the English Act have been adopted in the Canadian Act, the practice of using crossed cheques which is well known and frequent in England has never become usual and is in fact little understood in Canada.

The history of the English legislation in regard to crossed cheques and the meaning of the provisions of the present Act are discussed by Z. A. Lash, K.C., in an article in 6 Journal C. B. A. (1899) 166. See also Falconbridge, 619, *et seq.*

169. **By Drawer.**—A cheque may be crossed generally or specially by the drawer.

2. **By Holder.**—Where a cheque is uncrossed, the holder may cross it generally or specially.

3. **Varying.**—Where a cheque is crossed generally, the holder may cross it specially.

4. **Words may be Added.**—Where a cheque is crossed generally or specially, the holder may add the words *not negotiable*.

5. **By Bank for Collection.**—Where a cheque is crossed specially the bank to which it is crossed may again cross it specially to another bank for collection.

6. **Changing crossing.**—Where an uncrossed cheque, or a cheque crossed generally, is sent to a bank for collection, it may cross it specially to itself

7. **Uncrossing.**—A crossed cheque may be re-opened or uncrossed by the drawer writing between the transverse lines, the words *pay cash*, and initialling the same. 53 V., c. 33, s. 76. Eng. s. 77.

170. **Material.**—A crossing authorized by this Act is a material part of the cheque.

2. **Altering Crossing.**—It shall not be lawful for any person to obliterate or, except as authorized by this Act, to add to or alter the crossing. 53 V., c. 33, s. 77. Eng. s. 78.

171. **Crossed to more than one bank.**—Where a cheque is crossed specially to more than one bank, except when crossed to another bank as agent for collection, the bank on which it is drawn shall refuse payment thereof. 53 V., c. 33, s. 78. Eng. s. 79.

172. **Liability for Improper Payment—“Bona Fides.”**—Where the bank on which a cheque so crossed is drawn, nevertheless pays the same, or pays a cheque crossed generally otherwise than to a bank, or, if crossed specially, otherwise than to the bank to which it is crossed, or to the bank acting as its agent for collection, it is liable to the true owner of the cheque for any loss he sustains owing to the cheque having been so paid: Provided, that where a cheque is presented for payment which does not at the time of presentment appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this Act, the bank paying the cheque in good faith and without negligence shall not be responsible or incur any liability, nor shall the payment be questioned by reason of the cheque having been crossed, or of the crossing having been obliterated or having been added to or altered otherwise than as authorized by this Act, and of payment having been made otherwise than to a bank or to the bank to which the cheque is or was crossed, or to the

bank acting as its agent for collection as the case may be. 53 V., c. 33, s. 78. Eng. s. 79.

173. Protection in such Case.—Where the bank on which a crossed cheque is drawn in good faith and without negligence pays it, if crossed generally to a bank, or if crossed specially, to the bank to which it is crossed, or to a bank acting as its agent for collection, the bank paying the cheque, and if the cheque has come into the hands of the payee, the drawer shall respectively be entitled to the same rights and be placed in the same position as if payment of the cheque had been made to the true owner thereof. 53 V., c. 33, s. 79. Eng. s. 80.

174. Not negotiable Cross.—Where a person takes a crossed cheque which bears on it the words "not negotiable," he shall not have and shall not be capable of giving a better title to the cheque than that which had the person from whom he took it. 53 V., c. 33, s. 80. Eng. s. 81.

175. Customer without Title—Bank Paying "bona fides."—Where a bank in good faith, and without negligence, receives for a customer payment of a cheque crossed generally or specially to itself, and the customer has no title, or a defective title thereto, the bank shall not incur any liability to the true owner of the cheque by reason only of having received such payment. 53 V., c. 33, s. 81. Eng. s. 82.

PART IV.

PROMISSORY NOTES.

176. Definition.—A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money, to, or to the order of, a specified person, or to bearer.

2. Endorsed by Maker.—An instrument in the form of a note payable to the maker's order is not a note within the meaning of this section, unless it is endorsed by the maker.

3. Pledge—Invalidity.—A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof. 53 V., c. 33, s. 82. Eng. s. 83.

Unconditional.—See notes to sec. 17.

A note cannot be made conditionally, but a bill may be accepted conditionally (sec. 38).

Signed by the Maker.—As to signature, see sec. 4.

As to a simple signature on a blank paper delivered by the signer in order that it may be converted into a note, see sec. 31.

As to the contract entered into by the maker, see sec. 185.

As to when a note is payable on demand, see sec. 23.

As to when a note is payable at a determinable future time, see sec. 24. Cf. notes to sec. 17 under this head.

A note must not be expressed to be payable on a contingency (sec. 18).

A sum certain in Money.—Cf. notes to sec. 17.

A promise to pay out of a particular fund, is not a note (sec. 17).

Specified Person or Bearer.—Cf. notes to sec. 17.

No form of words is essential to the validity of a note, provided the requirements of this section be fulfilled, *Hooper v. Williams*

(1848), 2 Exch. 20; but, on the other hand, a document might conform to the terms of the section and yet not be a promissory note. It must be such as to shew the intention to make a note: *Sibree v. Tripp* (1846), 15 M. & W. 29. If there be no words amounting to a promise the instrument is merely evidence of a debt. For instance, a banker's deposit note running "Received of Mr. C. £150 to be accounted for on demand," and signed, will not be treated as a promissory note: *Hopkins v. Abbott* (1875), L. R. 19 Eq. 222.

An instrument promising to do anything in addition to the payment of money is not a note, sec. 17 (2), but it has been held in the U. S. that a promissory note may give the holder the option between the payment of the sum specified and the performance of some other act by the makers, though as to the latter it is not a note: *Cf. Dinsmore v. Duncan* (1874), 57 New York R. 573. As the holder can demand money, and no option is given to the maker, it is said there is no uncertainty in the instrument (Chalmers, p. 263).

If the instrument is ambiguous, and it is uncertain whether it was meant to be a bill or note, the construction most favorable to the validity of the instrument will be adopted: *Mare v. Charles*, 5 E. & B. 981 (1856). A bill may also be treated as a note under the circumstances mentioned in section 26.

An instrument invalid as a note may be valid as an agreement: *Kirkwood v. Smith*, W. N. 1896, 46 (16).

Bon or I. O. U. If the instrument is a simple I. O. U. and contains no promise to pay, it is a mere acknowledgment of the debt, and it is not negotiable, *Gould v. Coombs*, 1 C. B. 543 (1845). If there is a promise to pay it is a note, the following having been held sufficient: "11th Oct., 1831, I. O. U. £20, to be paid on the 22nd inst., W. B." *Brooks v. Elkins*, 2 M. & W. 74 (1836). See also *Desy v. Daly*, 1897, Q. R. 12 S. C. 183.

An I. O. U. ought regularly to be addressed to the creditor by name, but though not addressed to anyone, it will be evidence for the plaintiff, if produced by him Taylor on Evidence, s. 124.

When a note on its face contains a statement that it is given as collateral security, it is not a promissory note: *Sutherland v. Patterson*, 4 O. R. 565 (1894).

Where collateral security is given *with* a note, the right to such collateral goes with the note. *Central Bank v. Garland*, 20 Q. R. 142 (1890), and the creditor has a right to hold the securities even after the remedy on the note is barred by the statute of limitations: *Wiley v. Ledyard*, 10 Ont. P. R. 182 (1883).

177. Inland Note.—A note which is, or on the face of it purports to be, both made and payable within Canada, is an inland note.

2. Foreign Note.—Any other note is a foreign note. 53 V., c. 33, s. 82. Eng. s. 83.

Cf. sec. 25 and notes, as to inland and foreign bills.

178. Delivery.—A promissory note is inchoate and incomplete until delivery thereof to the payee or bearer. 53 V., c. 33, s. 83. Eng. s. 84.

By sec. 2, delivery means transfer of possession, actual or constructive, from one person to another. Cf. sec. 39.

179. Joint and Several Notes.—A promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor:

2. Individual Promise.—Where a note runs "I promise to pay," and is signed by two or more persons, it is deemed to be their joint and several note. 53 V., c. 33, s. 84. Eng. s. 85.

The law respecting joint and joint and several liabilities differs in Quebec from that in force in other parts of Canada. Under the French law in force in Quebec where several persons are jointly liable for a debt, each of them is liable for an equal fractional part to the creditor, whatever may be their respective rights as against each other: Pothier on Obligations, No. 165, 17 Laurent, Nos. 274, 280. Under English law, on the other hand, each joint debtor is liable to the creditor for the whole. If the creditor does not sue all who are alive and in the country, those who are sued might have proceedings stayed until the living joint debtors who are in the country are made parties. A judgment taken against some of the joint debtors frees the others from liability.

The Act has introduced in Quebec the English rule that two or more makers of a note may be liable jointly, or jointly and severally, according to the tenor of the note. (*Noble v. Forgrave*, 1899, Q.R. 17 S.C. 234). But when the question whether the liability is joint or joint and several has been decided, then the appropriate provincial law determines the consequences of such liability, which may be different from the liability at common law. *Cook v. Dodds*, 1903, 6 O.L.R. 608). Cf. notes to sec. 10.

Where one or two joint makers of a note signs for the accommodation of the other, their relation is that of the principal and surety, and the prescription of 5 years does not apply: *Cullen v. Bryson*, Q. R., 2 S. C. 36 (1892).

A "joint and several" liability is substantially the same in English and French law. Each of the debtors is liable for the full amount, and on his death his liability descends to his representatives. Payment by one discharges the liability of the others to the creditor. The debtor who has paid may have his right of contribution against his co-debtors. A judgment against one maker is no bar to proceedings against the others: *Re Davison*, 13 Q. B. D. 53 (1884). If one or more are sued, but not all, those who are sued have no right to delay the plaintiff by having the others called in. *Durocher v. Lapalme*, M. L. R. 1 S.C. 494 (1885). (*Maclaren*).

180. Demand note Presentment.—Where a note payable on demand has been endorsed, it must be presented for payment within a reasonable time of the endorsement.

2. Reasonable Time.—In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case. 53 V., c. 33, s. 85. Eng. s. 86.

Subject to the proviso to sec. 181, failure to present for payment within a reasonable time releases the endorser.

Cf. sec. 86, as to reasonable time in the case of bills.

As to presentment for payment generally, see notes to secs. 183 and 184.

181. Endorser Discharged—Security.—If a promissory note payable on demand, which has been endorsed is not presented for payment within a reasonable time the endorser is discharged. Provided that if it has, with the assent of the endorser, been delivered as a collateral or continuing security it need not be presented for payment so long as it is held as such security. 53 V., c. 33, s. 85. Cf. Eng. s. 86.

Where a demand note is payable with interest, this has been considered as an indication that an early presentment was not contemplated: *Thorn v. Scovil*, 4 N. B. (2 Kerr) 557 (1844).

Reasonable time appears to be a mixed question of law and fact.

Regard must be had to the nature of the instrument as a continuing security. *e. g.*, ten months may not be an unreasonable time: *Chartered Bank v. Dickson* (1871), L. R. 3 P. C. 579, but presentment of a demand note over three years after it was made is not within reasonable time: *Banque du Peuple v. Denincourt*, Q. R. 10 S. C. 428 (1897).

182. Not Deemed Overdue.—Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice, by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue. 53 V., c. 33, s. 85. Eng. s. 86.

A different rule applies to bills: see sec. 70.

A different rule also applies to the presentment of a note in order to charge an endorser, and for that purpose presentment within a reasonable time must be shown (sec. 181).

183. Presentment, where.—Where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place.

2. Liability of maker.—In such case the maker is not discharged by the omission to present the note for payment on the day that it matures, but if any suit or action is instituted thereon against him before presentation, the costs thereof shall be in the discretion of the court.

3. Note payable Generally.—If no place of payment is specified in the body of the note, presentment for payment is not necessary in order to render the maker liable. 53 V., c. 33, s. 86. Cf. Eng. s. 87.

Cf. sec. 93 which makes similar provisions for presentment of a bill in order to charge the acceptor.

A note payable at a particular place must be there presented before action brought. As against the endorser it must be presented on the day it falls due. As against the maker it may be presented at any time before action brought, but presentment at some time before action brought must be proved or the action fails. The provision as to costs means that if the maker succeeds, on the ground that no presentment is proved, the court may deprive him of costs. (*Jones v. England*, 1906, 5 West, L.R. 83, following *Warner v. Symon-Kaye*, 1894, 27 N.S.R. 340 in preference to *Merchants' Bank v. Henderson*, 1897, 28 O.R. 360.

184. As to Endorser.—Presentment for payment is necessary in order to render the endorser of a note liable.

2. Place Where.—Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an endorser liable.

3. What Sufficient.—When a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the endorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice. 53 V., c. 33, s. 86. Eng. s. 87.

By virtue of sec. 186, the rules applicable to presentment for payment of a bill (see secs. 85 *et seq.*) apply also to presentment for payment of a note, except in so far as special provision is made as to notes by secs. 180 to 184.

185. Maker—Engagement—Estoppel.—The maker of a promissory note, by making it,—

(a) engages that he will pay it according to its tenor.

(b) is precluded from denying to a holder in due course the existence of the payee and his then capacity to endorse. 53 V., c. 33, s. 87. Eng. s. 88.

The maker of a note, like the acceptor of a bill, is the principal debtor on the instrument and in the application to notes of the provisions of the Act relating to bills, the maker is deemed to correspond with the acceptor (sec. 186).

As to the contract of the acceptor, see secs. 128 and 129.

186. Application of Act to Notes.—Subject to the provisions of this Part, and except as by this section provided, the provisions of this Act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

2. Terms Corresponding.—In the application of such provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first endorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

3. Provisions Inapplicable.—The provisions of this Act as to bills relating to,—

- (a) presentment for acceptance;
- (b) acceptance;
- (c) acceptance *supra* protest;
- (d) bills in a set;

do not apply to notes. 53 V., c. 33, s. 88. Eng. s. 89.

187. Protest of Foreign Notes.—Where a foreign note is dishonoured, protest thereof is unnecessary, except for the preservation of the liabilities of endorsers. 53 V., c. 33, s. 88. Cf. Eng. s. 89.

As to the necessity for protest of inland bills and notes, see secs. 113 and 114. Cf. sec. 112, as to protest of a foreign bill.

If a note is dishonoured out of Canada the necessity for or sufficiency of a protest or notice of dishonour is determined by the law of the place where the bill is dishonoured (sec. 162).

A note which does not on the face of it purport to be both made and payable in Canada is a foreign note (sec. 177.)

FORM A.

NOTING FOR NON-ACCEPTANCE.

(Copy of Bill and Endorsements).

On the _____ 19____, the above bill was, by me, at the request of _____, presented for acceptance to E. F., the drawee, personally (or, at his residence, office or usual place of business), in the city (town or village) of _____ and I received for answer "____";
The said bill is therefore noted for non-acceptance. ,

A. B.,

Notary Public.

(Date and Place.)

Due notice of the above was by me served upon _____ { A. B., }
_____ { C. D., }

the { drawer } personally, on the _____ day of _____

(or, at his residence, office or usual place of business) in _____ day of _____ or, by deposit-

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the acceptor, drawer, and indorsers (or drawer and indorsers) of the said bill, and all other parties thereto or therein concerned, for all exchange, re-exchange, costs, damages and interest, present and to come, for want

of { acceptance }
of { payment } of the said bill.

All of which I attest by my signature.
(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch. form C.

FORM D.

PROTEST FOR NON-PAYMENT OF A BILL NOTED, BUT NOT PROTESTED FOR NON-ACCEPTANCE.

If the protest is made by the same notary who noted the bill, it should immediately follow the act of noting and memorandum of service thereof, and begin with the words, "and afterwards, on, &c.," continuing as in the last preceding form, but introducing between the words "did" and "exhibit," the word "again," and, in a parenthesis, between the words "written" and "unto," the words: "and which bill was by me duly noted for non-acceptance on the day of ."

But if the protest is not made by the same notary, then it should follow a copy of the original bill and indorsements and noting marked on the bill—and then in the protest introduce in a parenthesis between the words "written" and "unto," the words "and which bill was on the day of , by notary public for the Province of , noted for non-acceptance, as appears by his note thereof marked on the said bill."

53 V., c. 33, sch. form D.

FORM E.

PROTEST FOR NON-PAYMENT OF A NOTE PAYABLE GENERALLY.

(Copy of Note and Indorsements.)

On this day of , in the year 19 , I, A. B., notary public for the Province of , dwelling at , in the Province of , at the request of , did exhibit the original promissory note, whereof a true copy is above written, unto , the promisor, personally (or, at his residence, office or usual place of business), in , and speaking to himself (or his wife, his clerk or his servant, &c.), did demand payment thereof; unto which demand { he } answered: " " { she }

Wherefore I, the said notary, at the request aforesaid, have protested, and by these presents do protest against the promisor and indorsers of the said note, and all other parties thereto or therein concerned, for all costs, damages and interest, present and to come, for want of payment of the said note.

All of which I attest by my signature.
(Protested in duplicate.)

A. B.,
Notary Public.

53 V., c. 33, sch. form E.

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(Adapted from Chalmers.)

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Directorates of Canadian Chartered Banks and Incorporated Companies,

The Shares of which are Listed on any Stock Exchange,
Dividends paid and Dates on which the same
are payable.

BANKS.

THE BANK OF BRITISH NORTH AMERICA.

HEAD OFFICE FOR CANADA—MONTREAL.

Paid Up Capital, \$4,866,666.66; Reserve Fund, \$2,336,000.00.
Dividend 6 per cent., 1 per cent. Bonus per Annum, payable
3rd April and 3rd Oct.

W. S. Goldby, Manager.

A. G. Wallis, Secretary.

COURT OF DIRECTORS IN ENGLAND.

J. H. Brodie.

E. A. Hoare

J. J. Cater.

Henry J. B. Kendall.

J. H. M. Campbell.

Frederick Lubbock.

Richard H. Glyn.

C. W. Tomkinson.

G. D. Whatman.

H. Stikeman, General Manager for Canada.

LA BANQUE PROVINCIALE DU CANADA.

HEAD OFFICE, MONTREAL.

Capital Authorized—\$2,000,000.

Capital Paid Up, \$1,000,000.00; Surplus Fund, \$246,000.00.

Dividend 8 per cent. per annum, payable Jan., April, July and Oct.
DIRECTORS.

President.—H. Laporte; Vice-President,—Wm. F. Carsley.

Hon. Louis Beaubien

Tancrede Bienvenu.

Rod. Forget, M. P.

Alphonse Racine.

G. M. Bosworth.

THE CANADIAN BANK OF COMMERCE.

HEAD OFFICE, TORONTO.

Capital Paid Up, \$10,000,000; Rest, \$5,000,000.

Dividend 8 per cent. per Annum, payable 1st March, 1st June
1st September.

DIRECTORS.

President—B. E. Walker; Vice-President—Robert Kilgour.

Hon. Geo. A. Cox.

Hon. L. Melvin Jones.

Matthew Leggat.

Frederic Nicholls.

James Crathern.

H. D. Warren.

John Hoskin, K.C., LL.D.

Hon. W. C. Edwards.

Joseph W. Flavelle.

Z. A. Lash, K.C.

A. Kingman.

E. R. Wood.

DOMINION BANK.

HEAD OFFICE, TORONTO.

Capital Paid Up, \$3,980,000; Reserve Fund and Undivided Profits,
\$5,300,000.

Dividend 12 per cent. per Annum, payable 1st Jan., April, July, Oct.

DIRECTORS.

President—E. B. Osler, M.P.; Vice-President, W. D. Matthews.

A. W. Austin

J. C. Eaton.

W. R. Brock.

R. J. Christie.

James Carruthers.

J. J. Foy, K.C., M.L.A.

A. M. Nanton.

EASTERN TOWNSHIPS BANK.

HEAD OFFICE, SHERBROOKE QUEBEC.

Capital Authorized \$3,000,000; Capital Paid Up, \$3,000,000;
Reserve, \$2,000,000.Dividend, 8 per cent. per Annum, payable 1st Jan., April, July and
October.

DIRECTORS.

President—Wm. Farwell; Vice-President—S. H. C. Miner.

C. H. Kathan.

A. C. Flumerfelt.

G. Stevens.

Frank Grundy.

J. S. Mitchell.

O. A. Robertson.

Geo. G. Foster, K.C.

BANK OF HAMILTON.

HEAD OFFICE, HAMILTON.

Capital, \$2,500,000; Reserve \$2,500,000; Total Assets, \$32,000,000.
Dividend, 10 per cent. per Annum, payable 1st Mar., June, Sept. and
December.

DIRECTORS.

President—Hon. W. Gibson; Vice-President and General Manager
James Turnbull.

Cyrus A. Birge.

Col. The Hon. J. S. Hendrie, C.V.O.

Geo. Rutherford.

Charles C. Dalton.

BANQUE D'HOCHELAGA.

HEAD OFFICE, MONTREAL.

Capital, \$2,500,000; Rest, \$2,000,000.
Dividend 8 per cent. per Annum payable 1st March, June, Sept.
and December.

DIRECTORS.

President—F. X. St. Charles; Vice-President, R. Bickerdika.

Hon. J. D. Rolland.

A. Turcotte.

J. A. Vaillancourt.

J. M. Wilson.

E. H. Lemay.

THE HOME BANK OF CANADA.

HEAD OFFICE, TORONTO, ONT.

Capital Authorized, \$2,000,000; Paid Up, \$944,200; Rest, \$297,705.
Dividends 6 per cent., payable 1st June and December.

DIRECTORS.

President—Eugene O'Keefe; Vice-President—Thomas Flynn.
E. G. Gooderham. Lt.-Col. John. I. Davidson.
W. Parkyn Murray. John Persse, Winnipeg, Man.
J. Kennedy, Swan River, Man. Lt.-Col. James Mason.

IMPERIAL BANK OF CANADA.

HEAD OFFICE, TORONTO.

Capital Authorized, \$10,000,000.00.

Capital Paid Up, \$4,995,000; Reserve Fund, \$4,995,000.
Dividend 11 per cent. per Annum payable 1st Feb., May, Aug. and November.

DIRECTORS.

President—D. R. Wilkie; Vice-President—Hon. Robt. Jaffrey.
Wm. Ramsay. J. Kerr Osborne.
Wm. Whyte. Elias Rogers.
Cawthra Mulock. Peleg Howland.
Wm. Hamilton Meredith, M.D. Chas. Cockshutt.
Hon. Richard Turner.

THE MERCHANTS' BANK OF CANADA.

HEAD OFFICE, MONTREAL.

Capital Paid Up, \$6,000,000; Reserve and Undivided Profits,
\$4,267,400.

Dividend 8 per cent. per Annum, payable 1st March, June, Sept.
and December.

DIRECTORS.

Pres.—Sir H. Montagu Allan; Vice-President, Jonathan Hodgson.
Thos Long. C. M. Hays.
C. F. Smith. Alex Barnett.
Hugh A. Allan. F. Orr Lewis.
Bryce J. Allan.

MERCHANTS BANK OF PRINCE EDWARD ISLAND.

(Absorbed by Canadian Bank of Commerce, June 1, 1906.)

THE METROPOLITAN BANK.

HEAD OFFICE, TORONTO.

Capital Paid Up, \$1,000,000; Reserve Fund, \$1,000,000.
Dividend 8 per cent. per annum, 1st Jan., April, July, October.

DIRECTORS.

President—S. J. Moore, Vice-President, D. E. Thomson, K.C.
Jas. Ryrie. Thos. Bradshaw.
John Firstbrook. Sir W. Mortimer Clark.

THE MOLSONS BANK.

HEAD OFFICE, MONTREAL.

Capital Paid Up, \$3,374,000.00, Reserve Fund, \$3,374,000.00.
 Dividend 10 per cent. per Annum, payable 1st Jan., April, July and October.

DIRECTORS.

Pres.—Wm. Molson Macpherson; Vice-President, S. H. Ewing.
 W. M. Ramsay. H. Markland Molson.
 J. P. Cleghorn. Geo. E. Drummond.
 Wm. C. McIntyre.

BANK OF MONTREAL.

HEAD OFFICE, MONTREAL.

Capital, \$14,400,000; Rest, \$11,000.00; Undivided Profits, \$903,530.20
 Dividend 10 per cent. per Annum, payable 1st Mar., June, Sept. and December.

DIRECTORS.

Hon. Pres.—Rt. Hon. Lord Strathcona and Mount Royal, G.C.M.G.
 President—Hon. Sir Geo. A. Drummond, K.C.M.G.
 Vice-President—Sir Edward Clouston Bart,
 A. T. Paterson. James Ross.
 E. B. Greenshields. Hon. Robt. Mackay.
 Sir Wm. C. McDonald. Sir T. G. Shaughnessy.
 R. B. Angus. David Morrice.
 C. R. Hosmer.

THE MONTREAL CITY AND DISTRICT SAVINGS BANK.

HEAD OFFICE, MONTREAL.

Capital Subscribed, \$2,000,000; Capital Paid Up, \$600,000; Reserve Fund, \$900,000.

DIRECTORS.

President—Hon. Ald. J. Ouimet.
 Michael Burke. Richard Bolton.
 Hon. Robert Mackay. G. N. Moncel.
 H. Markland Molson. Robert Archer.
 Hon. R. Dandurand. M. Nowlan de Lisle.
 Hon. C. J. Doherty.
 A. P. Lesperance, General Manager.

LA BANQUE NATIONALE.

HEAD OFFICE, QUEBEC.

Capital Authorized, \$2,000,000.00; Capital Subscribed, \$1,800,000.00;
 Capital Paid Up, \$1,800,000.00; Reserve Fund, \$900,000.00
 Profit and Loss Account, \$52,584.03.
 Dividend 7 per cent. per Annum, payable 1st May, 1st February, 1st August and 1st November.

DIRECTORS.

President—R. Audette; Vice-President—Hon. Justice A. Chauveau.
 V. Chateauvert. J. B. Laliberte.
 Naz. Fortier. V. Lemieux.
 C. Pettigrew.

THE BANK OF NEW BRUNSWICK.

HEAD OFFICE, ST. JOHN, N.B.

Capital, \$735,000.00; Rest, \$1,268,000.00.

Dividends 12 per cent. per Annum, payable 1st Jan., April, July and October.

DIRECTORS.

President—James Manchester; Vice-President—Walter W. White, M.D.

Francis P. Starr.

G. West Jones.

T. McAvity.

Charles P. Baker.

R. B. Kessen, General Manager.

THE NORTHERN CROWN BANK.

HEAD OFFICE, WINNIPEG, MAN.

Capital Authorized, \$6,000,000; Paid Up, \$2,200,000.

DIRECTORS.

President—Sir D. H. McMillan, K.C.M.G.; Vice-Presidents—Capt. Wm. Robinson and Ed. Gurney.

Alan J. Adamson, M.P.

John A. McDougall.

D. C. Cameron.

Hon. R. P. Roblin.

Hon. W. H. Montague.

A Stamford White.

Frederick Nation.

Chas. Adams.

J. W. de C. O'Grady.

J. L. Coffee.

Chas. Magee.

BANK OF NOVA SCOTIA.

HEAD OFFICE, HALIFAX, N.S.

GENERAL MANAGER'S OFFICE, TORONTO.

Capital Paid Up, \$3,000,000; Reserve Fund, \$5,400,000.

Dividend 12 per cent. per Annum, payable 1st Jan. April, July and October.

DIRECTORS.

President—John Y. Payzant; Vice-President—Chas. Archibald.

R. L. Borden.

J. Walter Allison.

G. S. Campbell

Hector McInnes.

H. C. McLeod.

THE ONTARIO BANK.

(In Liquidation).

THE BANK OF OTTAWA.

HEAD OFFICE, OTTAWA.

Capital Authorized, \$5,000,000.

Capital Paid Up, \$3,000,000; Rest and Undivided Profits, \$3,327,832.48.

Dividend 10 per cent. per Annum, payable 1st March, 1st June, 1st September and 1st December.

DIRECTORS.

President—George Hay; Vice-President—David Maclaren.

Henry N. Bate.

John B. Fraser.

Hon. George Bryson.

Denis Murphy.

Henry K. Egan.

George H. Perley, M.P.

Edwin C. Whitney.

PROVINCIAL BANK OF CANADA.

(See La Banque Provinciale du Canada.)

THE QUEBEC BANK.

HEAD OFFICE, QUEBEC.

Capital, \$2,500,000; Rest, \$1,250,000.

Dividend 7 per cent. per Annum, payable 1st March, June, Sept. and December.

DIRECTORS.

President—John T. Ross; Vice-President—Vesey Boswell.
 Gaspard LeMoine. Thos. McDougall.
 W. A. Marsh. F. W. Ross.
 G. G. Stuart, K.C.

ROYAL BANK OF CANADA.

HEAD OFFICE, MONTREAL.

Capital Paid Up, \$3,900,000; Reserve, \$4,390,000.

Dividend 10 per cent. per Annum, payable 1st Jan., April, July and October.

DIRECTORS.

President—Thomas E. Kenny; Vice-President—H. S. Holt.
 Thomas Ritchie. F. W. Thompson.
 Wiley Smith. E. L. Pease.
 H. G. Bauld. G. R. Crowe.
 Hon. David Mackeen. D. K. Elliott.
 James Redmond. W. H. Thorne.

THE STANDARD BANK OF CANADA.

HEAD OFFICE, TORONTO.

Capital Paid Up, \$1,562,500.00; Reserve Fund, \$1,762,500.00.

Dividend 12 per cent. per Annum, payable 1st Feb., May, Aug. and November.

DIRECTORS.

President—W. F. Cowan; Vice-President—Frederick Wyld.
 W. F. Allen. W. R. Johnston.
 Wellington Francis. F. W. Cowan.
 H. Langlois.

LA BANQUE DE ST. HYACINTHE.

(In Liquidation).

DIRECTORATES OF CHARTERED BANKS, ETC.

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SAINT STEPHEN'S BANK.

ST. STEPHEN, N.B.

Capital Paid Up, \$200,000; Reserve, \$52,500.
Dividend 5 per cent. per Annum, payable Mar. 30 and Sept. 30.

DIRECTORS.

President—Frank Todd; Vice-President—John D. Chipman.
Frank Todd. John D. Chipman.
Henry F. Todd. John G. Murchie.
J. T. Whitlock.

THE STERLING BANK OF CANADA.

HEAD OFFICE, TORONTO, ONT.

Capital Authorized, \$1,000,000; Paid Up, \$807,300.00.

DIRECTORS.

President—G. T. Somers; Vice-President, W. K. George.
C. W. Spencer. John H. Tilden.
R. Y. Eaton. Wm. Dineen.
Noel Marshall. H. Wilberforce Aikins, B.A.,
Sidney Jones. M.D., M.R.C.S. (Eng.)

BANK OF TORONTO.

HEAD OFFICE, TORONTO.

Paid-Up Capital, \$4,000,000; Reserve Fund, \$4,500,000.
Dividend 10 per cent. per annum, payable quarterly 1st March, 1st
June, 1st September, 1st December..

DIRECTORS.

President—William H. Beatty; Vice-President—W. G. Gooderham.
Robert Reford. John Macdonald.
Hon C. S. Hyman. Albert E Gooderham.
Robert Mcighen. Nicholas Bawlf.
William Stone. Duncan Coulson.

THE TRADERS' BANK OF CANADA.

HEAD OFFICE, TORONTO.

Date of Incorporation, 1885.
Capital Authorized, \$5,000,000; Capital Subscribed, \$4,367,500.
Capital Paid Up. \$4,353,000; Rest, \$2,000,000.

DIRECTORS.

President—C. D. Warren; Vice-President—Hon. J. R. Stratton.
C. S. Wilcox, Hamilton. W. J. Sheppard, Waubaushehne.
C. Kloepper, Guelph. E. F. B. Johnston, K.C.
H. S. Strathy.
Dividend 7 p.c. per Annum, payable 1st Jan., April, July and
October.

DIRECTORATES OF CHARTERED BANKS, ETC.

UNITED EMPIRE BANK OF CANADA.

HEAD OFFICE, TORONTO.

George P. Reid, gen manager.

UNION BANK OF CANADA.

HEAD OFFICE, QUEBEC.

Capital Authorized, \$4,000,000; Capital Paid Up, \$3,200,000;
Rest, \$1,500,000.

Dividend 7 per cent. per Annum, payable quarterly, 1st March,
June, Sept., Dec.

DIRECTORS.

President—Hon. John Sharples;	Vice-President—Wm. Price.
M. B. Davis.	E. J. Hale.
R. T. Riley.	Geo. H. Thompson.
Wm. Shaw.	E. L. Drewry.
John Galt.	F. E. Kenaston.

UNION BANK OF HALIFAX.

HEAD OFFICE, HALIFAX, N.S.

Capital Paid Up, \$1,500,000.
Reserve Fund, \$1,175,000.

Dividend 8 per cent. per Annum, payable 28th Feb., 31st May,
31st Aug. and 30th November.

DIRECTORS.

President—Wm. Robertson;	Vice-President—Wm. Roche, M.P.
C. C. Blackadar.	A. E. Jones.
E. G. Smith.	W. M. P. Webster.

THE WESTERN BANK OF CANADA.

HEAD OFFICE, OSHAWA, ONT.

Authorized Capital, \$1,000,000; Subscribed Capital, \$555,000;
Paid Up Capital, \$555,000; Rest Account, \$350,000.

Dividend 7 per cent. per Annum, payable 1st April and 1st Oct.

DIRECTORS.

President—John Cowan;	Vice-President—R. S. Hamlin.
W. F. Cowan.	Thos. Paterson.
Robt. McIntosh, M.D.	W. F. Allan.

FARMERS' BANK OF CANADA.

HEAD OFFICE, TORONTO.

Authorized Capital, \$1,000,000.
Capital Subscribed, \$1,000,000.
Capital Paid Up, \$482,683.

DIRECTORS.

President—Lieut-Colonel James Munro, M.P.P., Embro, Ont.	
Vice-President and General Manager; W. R. Travers.	
Allan Eaton, Mt. Nemo, Ont.	W. G. Sinclair, Zimmerman, Ont.
Burdge Gunby, Kilbride, Ont.	A. Groves, M.D., Fergus,

MISCELLANEOUS COMPANIES.

THE BELL TELEPHONE COMPANY.

HEAD OFFICE, MONTREAL.

Incorporated 1880; Capital Stock, \$12,500,000.

DIRECTORS.

President—C. F. Sise; Vice-President—Hon. Robert Mackay.

Theo. N. Varl.

Robert Archer.

W. R. Driver.

Hugh Paton.

Charles Cassils

H. D. Warren.

Thos. Sherwin.

W. H. Black, Secretary.

Dates on which Dividends are payable 15th Jan., April, July and Oct. Rate of last Dividend, 2 per cent. per quarter.

THE BRITISH AMERICA ASSURANCE COMPANY.

HEAD OFFICE, TORONTO.

Incorporated Feb. 13, 1883; Capital Stock, \$1,400,000.00.

DIRECTORS.

President—Hon. Geo. A. Cox; Vice-President—W. R. Brock,

Robert Bickerdike, M.P.

Frederic Nicholls.

Augustus Myers.

E. W. Cox.

D. B. Hanna.

Z. A. Lash.

W. B. Meikle.

E. R. Wood.

Alex Laird.

James Kerr Osbourne.

Geo. A. Morrow.

John Hoskin, K.C., LL.D.

Lt.-Col. Sir H. M. Pellatt.

OFFICERS:

W. B. Meikle, Gen. Manager.

P. G. Kimberley, Asst. Secretary.

P. H. Sims, Secretary.

W. H. Banks, Asst. Secretary

CANADA LIFE ASSURANCE COMPANY.

HEAD OFFICE, TORONTO.

Incorporated 21st August, 1849; Capital Stock fully Paid Up,
\$1,000,000.President—Hon. Geo. A. Cox; Vice-President—John Hoskin, K.C.;
Joint General Managers—E. W. Cox and F. Sanderson;
Secretary—A. Gillespie; Treasurer—H. L. Watt.

DIRECTORS.

Kenneth MacKenzie.	Adam Brown.
Hon. Robert Jaffray.	E. R. Wood.
Z. A. Lash, K.C.	F. Sanderson.
John Hoskin, K.C., LL.D.	B. E. Walker, D.C.L.
E. W. Cox.	H. B. Walker.
A. Bruce, K.C.	Hon. Geo. A. Cox (Pres.).
Hon. Wm. Gibson.	Charles Chaput.
	Geo. H. Russel.

CANADA PERMANENT MORTGAGE CORPORATION.

HEAD OFFICE, TORONTO.

Incorporated 1899; Capital Stock (paid-up), \$6,000,000; Reserve
Fund, \$2,750,000.00; Assets, \$25,778,809.85.

DIRECTORS.

President—W. H. Beatty; 1st Vice-President, W. G. Gooderham;
2nd Vice-President—W. D. Matthews.
J. Herbert Mason, Frederick Wyld.
G. W. Monk, S. Nordheimer.
Ralph K. Burgess, George F. Galt (Winnipeg).

R. T. Riley (Winnipeg).

R. S. Hudson and John Massey, Joint General Managers.

Secretary—George H. Smith.

Dates on which Dividends are payable, January and July; Rate of
last Dividend 7 per cent.

THE CANADIAN COLORED COTTON COMPANY

HEAD OFFICE, MONTREAL.

Incorporated 1892; Capital Stock, \$2,700,000.00.

DIRECTORS.

Pres.—D. Morrice; Vice-Pres.—Hon. Sir Geo. Drummond, K.C.M.G.
Sec.-Treasurer—A. Bruce.

Sir E. S. Clouston, Bart.	D. Morrice, jun.
T. King.	Geo. Caverhill.
A. A. Morrice.	A. O. Dawson.

Hon. F. L. Belque, K.C.

Dates on which Dividends are payable, 15th March, 15th June,
15th September, 15th December. Rate of last Dividend
4 per cent.

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DIRECTORATES OF CHARTERED BANKS.
CANADIAN GENERAL ELECTRIC COMPANY, LIMITED.

HEAD OFFICE, TORONTO.

Incorporated, 1892.

DIRECTORS.

President—W. R. Brock; 1st Vice-President—H. P. Dwight; 2nd Vice-President and General Manager—Frederic Nicholls.
Assistant General Manager and Secretary—H. G. Nicholls.

Hon. George A. Cox,
Rodolphe Forget,
Herbert S. Holt,
Hon. Robert Jaffray,
Hon. J. K. Kerr, K.C.

Wm. Mackenzie,
W. D. Matthews,
H. G. Nicholls,
James Ross,
E. R. Wood.

A. C. Dymont.

Dates on which Dividends are payable on Common Stock, April 1.
July 1, Oct. 30, and Jan. 1. Rate of Dividend, 7 per cent.
per annum. Preference Stock, 7 per cent. per annum,
payable April 1, and Oct. 1.

Common Stock.. . . .	\$4,700,000.00
Preference Stock.. . . .	2,000,000.00
	<hr/>
	\$6,700,000.00

THE CANADIAN PACIFIC RAILWAY COMPANY.

MONTREAL.

Incorporated Feb. 17, 1881; Capital Stock, \$150,000,000.

Chairman—Sir W. C. Van Horne; President—Sir Thos. G. Shaughnessy; Vice-President—D. McNicoll; 2nd Vice-President—W. Whyte; 3rd Vice-President—I. G. Ogden; 4th Vice-President—G. M. Bosworth.

Dates on which Dividends are payable—April and Oct; Rate of last Dividend 7 per cent.

THE CENTRAL CANADA LOAN AND SAVINGS
COMPANY.

TORONTO.

Capital Stock Subscribed, \$2,500,000; Paid Up, \$1,500,000.

DIRECTORS.

President—Hon. Geo. A. Cox;	Vice-President—E. R. Wood.
Sir Thomas W. Taylor.	Wm. Mackenzie.
E. W. Cox.	Hon. Robert Jaffray.
Richard Hall.	J. H. Housser.
J. J. Kenny.	Chester D. Massey.
F. C. Taylor.	G. A. Morrow.
H. C. Cox.	

W. S. Hodgins, Secretary.

Dates on which Dividends are payable, 1st January; Rate of last Dividend. 2 per cent. (8 p.c. per annum).

THE CONSOLIDATED MINING & SMELTING COMPANY OF
CANADA, LIMITED.

Capital Authorized, \$5,500,000; Capital Subscribed, \$5,355,200.

DIRECTORS.

President—W. D. Matthews, Toronto; Vice-President—George
Sumner, Montreal; Managing Director—W. H. Aldridge,
Trail, B.C.

E. B. Osler, Toronto. W. L. Matthews, Toronto.
Charles R. Hosmer, Montreal. J. C. Hodgson, Montreal.
H. S. Osler, Toronto.

THE CONSUMERS' GAS COMPANY.

HEAD OFFICE, TORONTO.

Incorporated 1848; Authorized Capital, \$3,500,000; Issued,
\$2,500,000.

President—John L. Blaikie; Vice-President—A. W. Austin.

DIRECTORS.

A. W. Austin.	F. LeM. Grasett, M.D.
J. L. Blaikie,	James Henderson, M.A., D.C.L.
A. H. Campbell, jun.	John Hoskin, K.C., LL.D., D.C.L.
Sir W. Mortimer, Clark	K.C.LL.D. Thomas Long.
Wellington Francis.	E. B. Osler, M.P.
The Mayor.	Andrew Smith, F.R.V.C.S.

General Manager and Secretary, W. H. Pearson.

Dates on which Dividends are payable—1st Feb., 1st May, 1st Aug.,
1st Nov.; Rate of last Dividend, 10 per cent. per Annum.

THE DETROIT UNITED RAILWAY COMPANY,
DETROIT, MICH.

Incorporated Dec. 31, 1900; Capital Stock, \$12,500,000.

DIRECTORS.

President—J. C. Hutchins; Vice-Presidents—E. W. Moore, Arthur
Pack; Treasurer—George H. Russel; General
Manager—F. W. Brooks.

Chas. W. Swift. Alonzo Potter.
J. M. Wilson. R. B. Van Cortlandt.
A. J. Ferguson.

Edwin Henderson, Secretary; A. E. Peters, Asst.-Secretary.

Dates on which Dividends are payable, Feb. 1, May 1, Aug. 1, Nov.
1; Rate of last Dividend, Nov. 1, 1906, 1¼ per cent. quarterly.

THE DOMINION COAL COMPANY.

HEAD OFFICE, MONTREAL.

Incorporated 1893; Capital Stock, \$15,000,000, Common; \$3,000,000
7 p. c. Preferred; \$5,000,000 First Mortgage, 5 p.c. Bonds;
Interest May and November 1st. Dividend Common Stock
1 per cent. January, April July and October 1st.
Pres.—Jas. Ross, Montreal; Vice-Pres.—F. L. Wanklyn, Montreal;
2nd Vice-President and General Manager—G. H. Duggan,
Glace Bay; Sec. and Treasurer.—J. Mackal, Montreal

DIRECTORS.

Rt. Hon. Lord Strathcona & Hon. Geo. A. Cox.	
Mt. Royal.	J. R. Wilson.
R. B. Angus.	W. D. Matthews.
James Ross.	W. B. Ross, K.C.
F. L. Wanklyn.	H. F. Dimock.
James Crathern.	J. K. Osborne.

Rate of last Dividend $3\frac{1}{2}$ per cent. on Preferred Stock, February
1 and August 1, each $3\frac{1}{2}$ per cent.

THE DOMINION IRON AND STEEL COMPANY.

HEAD OFFICE, SYDNEY, C.B.

Incorporated 1899; Capital Stock—Common, \$20,000,000;
Preferred, \$5,000,000.
President—J. H. Plummer; Vice-President—Hon. J. Forget;
Secretary-Treasurer—C. S. Cameron;
General Manager—F. P. Jones.

DIRECTORS.

Sir Montagu Allan.	Hon. R. Mackay.
Hon. G. A. Cox.	Wm. McMaster.
Geo. Caverhill.	F. Nicholls.
H. F. Dimock.	J. H. Plummer.
Hon. L. J. Forget.	W. G. Ross.
Hon. David McKeen.	Elias Rogers.

Sir W. C. Van Horne.

Dates on which Dividends are payable on Preferred Stock, April
and Oct.; Rate of last Dividend, 7 per cent. per Annum on
Preferred. No Dividend on Common, and no Dividend
paid on Preferred since April, 1903.

THE DOMINION SAVINGS AND INVESTMENT SOCIETY.

HEAD OFFICE, LONDON.

Incorporated April, 1872; Capital Stock, \$1,000,000.

DIRECTORS.

President—T. H. Purdom, K.C.; Vice-President—John Ferguson.
W. J. McMurtry. Samuel Wright.
Francis Love, P.M. Jno. Purdom.
Dates on which Dividends are payable—Jan. 1st, July 1st; Rate of
last Dividend, 4 per cent.

DOMINION TEXTILE COMPANY, LTD.

HEAD OFFICE, MONTREAL.

Date of Incorporation January 4, 1905; Amount of Capital Stock
Common, \$5,000,000; Preferred, \$1,857,888.

Dividend 7 p. c. on Preferred.
Dividend 5 per cent on Common.

President—David Yuile, Esq.; 1st Vice-President—Hon. L. J.
Forget; 2nd Vice-President and Managing Director—C.
B. Gordon, Esq.; Secretary-Treasurer—C. E. Hanna, Esq.

DIRECTORS.

Hon. Robert Mackay.
H. S. Holt.
J. P. Black.
D. Williamson.
G. A. Grier.

D. Morrice, sen.
H. V. Meredith.
A. B. Mole.
John Baillie.

HALIFAX ELECTRIC TRAMWAY COMPANY, LIMITED.

HEAD OFFICE, HALIFAX, N.S.

Incorporated March 20, 1895; Capital Stock, \$1,350,000.

President—Hon. David Mackeen; 1st Vice-Presidents—J. Y.
Payzant, W. B. Ross.

DIRECTORS.

J. C. Mackintosh.
H. S. Poole.

Abner Kingman, Montreal.
Jas. Hutchison, Montreal.
F. B. McCurdy, Halifax.

James W. Crosby, Manager; W. J. DeBlois, Secretary.

Dates on which Dividends are payable—1st Jan., April, July, Oct.;
Rate of last Dividend, $1\frac{1}{2}$ per cent. or 6 per cent. annually.

THE HAMILTON PROVIDENT AND LOAN SOCIETY.
HAMILTON, ONT.

Incorporated 1871.

Capital Authorized, \$3,000,000; Subscribed \$1,500,000; Paid Up
\$1,100,000.

DIRECTORS.

President—Alex. Turner; Vice-President—Geo. Rutherford.
Hon. Wm. Gibsor. Joseph Greene.
John T. Glassco. George Hope.

C. Ferrie, Manager.

Dates on which Dividends are payable—2nd Jan. and 2nd July;
Rate of last Dividend, 6 per cent. per annum, payable half-yearly.

HURON AND ERIE LOAN AND SAVINGS COMPANY,

HEAD OFFICE, LONDON.

Capital Authorized, \$5,000,000.00.
Capital Subscribed, \$3,500,000; Capital Paid Up, \$1,900,000;
Reserve Fund, \$1,655,000.

DIRECTORS.

President— J. W. Little; Vice-Presidents—T. G. Meredith, K.C.
and Robert Fox.

John Labatt.	F. E. Leonard.
F. R. Eccles, M.D.	A. T. McMahan.
William Saunders, C.M.G.	
Hume Cronyn, Manager.	
H. W. Givins, Assistant Manager.	

THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA,

HEAD OFFICE, TORONTO.

Incorporated 23rd April, 1896; Capital Stock, \$1,000,000.

President—Hon. Sir Mackenzie Bowell, P.C., K.C.M.G.; First
Vice-President—Hon. S. C. Wood; Second Vice-President—S. J.
Moore.

DIRECTORS.

A. E. Kemp, M.P.	Hon. Wm. Harty, M.P.
Hugh N. Baird.	J. J. Kenny.
Wm. Mackenzie.	E. T. Malone, K.C.
F. R. Eccles, M.D., F.R.C.S.	Hon. David MacKeen.
Warren Y. Soper.	W. G. Morrow.
H. S. Holt.	George A. Morrow.
T. Bradshaw, F.I.A., Managing Director.	

Dates on which Dividends are payable. 1st Jan., April, July and
October; Rate of last Dividend 8 per cent.

THE IMPERIAL LOAN AND INVESTMENT CO., OF CANADA,

HEAD OFFICE, TORONTO.

Incorporated 14th Sept., 1869; Capital Stock Paid Up, \$735,454.31.

DIRECTORS.

President—John H. Tilden; Vice-President—Douglas A. Burns;
Secretary—Thos. T. Rolph.
W. M. Douglas, K.C. E. L. Taylor.

Dates on which Dividends are payable. 2nd Jan. and July; Rate
of last Dividend, 5 per cent. per annum.

INTERCOLONIAL COAL MINING CO., LIMITED.

HEAD OFFICE, MONTREAL.

Date of Incorporation 1866; Amount of Capital Stock Common, \$500,000 All Issued; Preferred, \$250,000; Issued, \$219,700; Bonds, \$350,000; Issued, \$242,500.

President—James P. Cleghorn; Vice-President and Managing Director—D. Forbes Angus; Sec.-Treasurer—Chas. A. Dowd.

DIRECTORS.

W. M. Ramsay.

R. MacD. Paterson.

A. W. Hooper.

R. W. Blackwell.

E. Goff Penny.

Dates on which Dividends are payable 1st March and 1st September. Rate of last Dividend Common 7 p.c. per annum payable half yearly; Preferred 7 p.c. per annum payable half yearly 1st March and 1st September. Bonds, 5 p. c. half-yearly, 1st April, 1st October.

THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA.

HEAD OFFICE, TORONTO.

Incorporated 23rd April, 1896; Capital Stock, \$1,000,000.

President—Hon. Sir Mackenzie Bowell, P.C., K.C.M.G.; First Vice-President—Hon. S. C. Wood; 2nd Vice-President—S. J. Moore;

DIRECTORS.

A. E. Kemp, M.P.

H. S. Holt.

Hugh N. Baird.

Hon. David MacKeen.

Wm. Mackenzie.

Hon. Wm. Harty, M.P.

F. R. Eccles, M.D., F.R.C.S.

J. J. Kenny.

Warren Y. Soper.

E. T. Malone, K.C.

W. G. Morrow.

George A. Morrow.

Managing Director—T. Bradshaw, F.I.A.

Dates on which Dividends are payable, 1st Jan., April, July and October; Rate of last Dividend 6 per cent.

LAKE OF THE WOODS MILLING COMPANY, LIMITED.

Date of Incorporation May 29, 1903; Amount of Capital Stock Common, \$4,000,000; Preferred, \$1,500,000.

President—Robert Meighen; Vice-President—Hon. Robert McKay; Secretary—F. E. Bray; Treasurer—F. S. Meighen.

DIRECTORS.

Robert Meighen.

Hon. Robt. McKay.

Robert Reford.

R. M. Ballantyne,

F. S. Meighen.

James W. Pyke.

W. W. Hutchison.

Geo. V. Hastings.

Abner Kingman.

Dates on which Dividends are payable quarterly 7 p.c. per annum December 1, Rate of last Dividend Com. 6 p.c. per annum.

THE LANDED BANKING & LOAN COMPANY.

HEAD OFFICE, HAMILTON, ONT.

Incorporated 1877; Capital Stock, \$700,000.

DIRECTORS.

President—Hon. Thos. Bain; Vice-President—C. S. Scott.
Charles Mills, S. F. Lazier, K.C.
S. Barker, M.P. M. Leggat.

C. W. Cartwright, Manager.

Dates on which Dividends are payable—1st Jan. and 1st July;

Rate of last dividend, 6 per cent. per annum.

THE LONDON AND CANADIAN LOAN AND AGENCY COMPANY, LTD.

HEAD OFFICE, TORONTO.

Incorporated 15th Oct., 1863; Capital Stock, \$1,000,000
all paid up.

President—Thos. Long, M.A.; Vice-President—C. S. Gzowski.
Manager—V. B. Wadsworth.

Secretary—Wm. Wedd, jr.

DIRECTORS.

Lord Strathcona & Mount Royal. D. B. Hanna,
F. Barlow, Cumberland. C. C. Dalton,
A. H. Campbell, jun. Goldwin L. Smith.

Dates on which Dividends are payable—2nd Jan. and 2nd July;
Rate of last Dividend, 3 per cent. for half-year.

THE LONDON ELECTRIC COMPANY.

LONDON, ONT.

Incorporated 1894; Capital Stock, \$500,000; Authorized,
\$406,200; Paid Up, \$100,000 Bonds.

DIRECTORS.

President—W. D. Matthews; Vice-President—H. P. Dwight.
W. R. Brock. Chas. B. Hunt.
Hon. Geo. A. Cox. M. J. Kent.
Hon. Robert Jaffray. Edmund Meredith.
Hon. J. K. Kerr, K.C. Frederic Nicholls.

J. C. Judd.

Frederic Nicholls, Secretary.

Chas. B. Hunt, Manager.

Dates on which Dividends are payable—June 1 and Dec. 1; Rate
of last Dividend, 6 per cent. per annum.

1092, DIRECTORATES OF CHARTERED BANKS, ETC.

THE LONDON LOAN AND SAVINGS COMPANY OF CANADA.

LONDON, ONT.

Incorporated 1877; Capital Stock, \$700,000.00.

DIRECTORS.

President—R. W. Puddicombe; Vice-Presidents—G. G. McCormick,
and Albion Parfitt.

Thos. Kent.

Thos. Baker.

M. J. Kent, manager.

Dates on which Dividends are payable—31st Dec. and 30th June;
Rate of last Dividend 6 p.c. per annum.

THE LONDON STREET RAILWAY COMPANY,

LONDON, ONT.

Incorporated 1875; Capital Stock, \$550,000; Bond \$500,000.

President—H. A. Everett; Vice-President—T. H. Smallman;

Secretary-Treasurer—Geo. H. Bentson;

Manager—C. B. King.

DIRECTORS.

H. A. Everett.

P. W. D. Broderick

T. H. Smallman.

W. M. Spencer.

C. W. Watson.

H S. Holt,

E. W. Moore.

Dates on which Dividends are payable—January and July; Last
Dividend, July, 3 per cent.

THE MONTREAL LIGHT, HEAT AND POWER COMPANY.

MONTREAL, QUEBEC.

Incorporated March 28, 1901; Capital Stock, \$17,000,000.

DIRECTORS.

President—H. S. Holt; 1st Vice-President—W. McLea Walbank;

2nd Vice-President—R. Forget, M.P.

Hon. L. J. Forget.

Sir H. Montagu Allan.

Hon. Robt. Mackay.

Charles R. Hosmer.

Hon. H. B. Rainville.

M. P. Davis.

Sec.-Treasurer—J. S. Norris.

Dates on which Dividends are payable—May 15, Aug. 15, Nov. 15
and Feb. 15; Rate of last Dividend, 6 per cent. per annum.

THE MONTREAL LOAN AND MORTGAGE COMPANY.

MONTREAL, QUEBEC.

Incorporated March, 1858; Capital Stock, \$500,000; Reserve, \$440,000.

DIRECTORS.

President—Richard Bolton;	Vice-President—Geo. Caverhill.
W. E. Cheese.	C. E. Gault.
W. Ernest Bolton.	S. A. McMurtry.

Dates on which Dividends are payable—15th Mar. and 15th Sept.
Rate of last Dividend, 4 per cent. for half-year.

MONTREAL STEEL WORKS, LIMITED.

MONTREAL, QUEBEC.

Incorporated in 1902.

Preferred Capital, \$800,000; Common Stock, \$700,000.

President—K. W. Blackwell; Vice-President—J. R. Wilson; Vice-President and General Manager—W. F. Angus; Vice-President and Treasurer—C. H. Godfrey.

DIRECTORS.

K. W. Blackwell.	C. H. Godfrey.
J. R. Wilson.	W. F. Angus.
Charles Scott, jun.	R. Mac. D. Paterson.

Dates on which Dividends are payable quarterly on the preferred;
Rate of last Dividend, Common, 7 p. c.; Preferred 7 p. c.

MONTREAL STREET RAILWAY COMPANY.

MONTREAL, QUEBEC.

Incorporated May 18, 1861; Capital Stock, \$9,000,000.

President—Hon. L. J. Forget; Vice-President—K. W. Blackwell;
Managing Director—W. G. Ross.

DIRECTORS.

Sir H. Montagu Allan.	Robert Meighen.
Paul Galibert.	Geo. Caverhill.
D. McDonald, Manager; Patrick Dubee, Secretary.	

Dates on which Dividends are payable, 1st day of February, May, Aug. and Nov.; Rate of Dividend, 2 1-2 per cent. quarterly.

THE MONTREAL TELEGRAPH COMPANY.

MONTREAL, QUEBEC.

Incorporated July, 1847; Capital Stock, \$2,000,000.00

DIRECTORS.

President—Hugh A. Allan; Vice-President—A. T. Paterson.

William Wainwright. Wm. McMaster.

Wm. R. Miller.

Secretary and Treasurer—D. Ross-Ross.

Dates on which Dividends are payable, Jan. 15, April 15, July 15,

Oct. 15; Bonus paid with October Dividend; Rate of

last Dividend, 8 per cent. per annum; Bonus, $\frac{1}{4}$ per cent.

THE NATIONAL TRUST COMPANY OF ONTARIO.

HEAD OFFICE, TORONTO.

Incorporated Aug. 12, 1898; Capital Stock, \$1,000,000, fully paid up;
Reserve Fund, \$550,000.

President—J. W. Flavell; Vice-Presidents—Z. A. Lash, K.C.,

E. R. Wood and W. T. White, General Manager.

DIRECTORS.

Hon. Mr. Justice Britton.

Hon. Geo. A. Cox.

C. Mulock.

James Crathern.

H. H. Fudger.

H. B. Walker.

Alex. Laird.

J. H. Plummer.

Wm. Mackenzie.

G. H. Watson, K.C.

Chester D. Massey.

Elias Rogers.

Robert Kilgour.

H. S. Holt.

H. Markland Molson.

Alex. Bruce, K.C.

E. W. Cox.

A. E. Kemp, M.P.

W. E. Rundle, Manager.

Dates on which Dividends are payable—Quarterly, 1st April, July,

Oct., Jan.; Rate of last Dividend—Quarterly, 2 per cent.

THE OGILVIE FLOUR MILLS CO., LIMITED.

HEAD OFFICE, MONTREAL.

Preferred Capital Stock, \$2,000,000; Common Stock, \$2,500,000.

President—Charles R. Hosmer; Vice-President and

Managing Director—F. W. Thompson.

Treasurer—S. A. McMurtry.

Secretary—Thos. Williamson.

DIRECTORS.

Sir Montagu Allan.

Sir E. S. Clouston, Bart.

Charles R. Hosmer.

Shirly Ogilvie.

H. S. Holt.

Hon. Sir Geo. A. Drummond,

K.C.M.G.

F. W. Thompson.

Dividends on Preferred Stock payable quarterly—1st September,
1st December, 1st March, and 1st June, at
the rate of 7 per cent. per annum.

THE ONTARIO LOAN AND DEBENTURE COMPANY,

HEAD OFFICE, LONDON.

Incorporated 1870; Capital Stock, \$2,000,000.00

DIRECTORS.

President—John McClary; Vice-President—Arthur S. Emery.
William Bowman. Lieut.-Col. Wm. M. Gartshore.
John M. Dillon.

A. M. Smart, Manager and Secretary-Treasurer.

Dates on which Dividends are payable—1st Jan. and 1st July;
Rate of last Dividend, $3\frac{3}{4}$ per cent.

THE OTTAWA ELECTRIC RAILWAY COMPANY.

OTTAWA, ONT.

Incorporated Aug. 13, 1893, for thirty years; Capital
Stock, \$1,247,700 Paid Up.

DIRECTORS.

President—T. Ahearn; Vice-President—Peter Whelen.
Warren Y. Soper. George P. Brophy.
Thomas Workman. Hon. Geo. A. Cox.
Sec.-Treasurer—James D. Fraser.

Dates on which Dividends are payable, Jan. 1, April 1, July 1.
Oct. 1; Rate of last Dividend, 2 per cent. for quarter,
and bonus of 4 per cent. making 2 p. c., 1907.

THE QUEBEC JACQUES CARTIER ELECTRIC COMPANY.

QUEBEC, P.Q.

Incorporated 22nd January, 1897; Capital, \$1,500,000.

President and Manager—J. M. McCarthy, Quebec; Chairman of
Board—Emerson McMillen, New York;
Secretary—J. E. Tanguay, Quebec.

DIRECTORS.

E. McMillen. R. H. Landale.
H. B. Wilson. H. L. Doherty.
J. M. McCarthy. A. P. Lathrop.

P. B. Dumoulin.

Dates on which Dividends are payable, Oct., Jan., April, July.
Rate of last Dividends, Com., $1\frac{1}{2}$ per cent. quarterly.

THE QUEBEC RAILWAY LIGHT AND POWER COMPANY.

QUEBEC, P.Q.

Incorporated 10th July, 1899; Authorized Capital Stock—Common,
\$2,500,000; Preferred, \$1,000,000; Preferred, Paid Up, \$610,175;
Subscribed \$6,724.

President—G. H. Thomson; Vice-President—F. Ross.

DIRECTORS.

William Hanson.
W. Price.
L. C. Marcoux.

Rodolphe Forget.
Hon. John Sharples.
William Shaw.

F. W. Ross.

Dates on which Dividends are payable—1st May and 1st Nov.;
Rate of last Dividend, 7 per cent. on Preferred Stock.

THE QUEBEC STEAMSHIP COMPANY, LIMITED.

HEAD OFFICE, QUEBEC.

Incorporated 1867; Capital Stock, \$2,500,000.
President—William Price; Vice-President—John T. Ross.

DIRECTORS.

M. Nowlan de Lisle.
Hon. John Sharples.
Geo. D. Davie.

Sir George Garneau.
Arthur A. Ahern.
George H. Thomson.

Arthur Ahern, Secretary.

Dates on which Dividends are payable—May and November; Rate
of last Dividend, 6 per cent.

THE REAL ESTATE LOAN COMPANY, OF CANADA, LTD.

HEAD OFFICE, TORONTO.

Incorporated 6th April, 1883; Capital Stock, Authorized, \$1,600,000;
Subscribed Capital, \$373,720; Paid Up, \$373,720; Rest
Account, \$85,000

DIRECTORS.

President—Wm. Cooke; Vice-President—M. H. Alkins. M.D.;
Manager—E. L. Morton.

E. Douglas Armour, K.C., LL.D. Edmund Wragge, M.E.C.
G. M. Rae

Dates on which Dividends are payable—1st Jan., and 1st July; Rate
of last Dividend, 2 3-4 per cent.

THE RICHELIEU & ONTARIO NAVIGATION COMPANY.

HEAD OFFICE, MONTREAL.

Incorporated 1857; Capital Stock, \$3,132,000.

President—R. Forget; Vice-President—Wm. Wainwright.

DIRECTORS.

Geo. Caverhill.

C. O. Paradis.

Hon. E. B. Garneau.

Hon. J. P. B. Casgrain.

A. Haig Sims.

Sir H. M. Pellatt.

H. Markland Molson.

Wm. Hanson.

Hon. L. J. Forget.

C. J. Smith, General Manager.

J. A. Villeneuve, Comptroller and Treasurer; Thos. Henry, Traffic Manager; F. Percy Smith.

Secretary; Gilbert Johnston, Mechanical Superintendent.

Dates on which Dividends are payable: Dec. 1, March 1, June 1, Sept. 1; Rate of last Dividend, Com., 5 per cent.

THE SAO PAULO TRAMWAY, LIGHT & POWER COMPANY, LIMITED.

HEAD OFFICE, TORONTO.

Incorporated 1899; Capital Stock \$10,000,000.

Gold Bonds (5 per cent.) \$6,000,000.

DIRECTORS.

President—Wm. Mackenzie; Vice-Presidents—Frederic Nicholls, Z.

A. Lash, Alexander Mackenzie; Manager, W. N. Walmsley;

Secy.-Treas., J. M. Smith:

William MacKenzie.

Z. A. Lash.

Frederick Nicholls.

J. H. Plummer.

E. R. Wood.

A. W. Mackenzie.

Hon. G. A. Cox.

Dr. F. S. Pearson.

Sir H. M. Pellatt.

R. M. Horne Payne.

Dates on which Dividends are payable quarterly, Jan., April, July, Oct.; Rate of last Dividend 2 per cent., equal to 8 per cent. per annum.

THE ST. JOHN STREET RAILWAY COMPANY.

ST. JOHN, N.B.

Incorporated May 1st, 1895; Capital Stock \$800,000.00.

President—James Ross; Vice-President—H. H. McLean; Sec.-Treasurer—H. M. Hopper.

DIRECTORS.

H. B. Robinson.

Wm. Downie.

James Manchester.

J. J. Tucker.

R. B. Emerson.

F. E. Sayre.

Dates on which Dividends are payable June 15, December 15; Rate of last Dividend 6 per cent.

THE ST. LAWRENCE & CHICAGO STEAM NAVIGATION COMPANY, LIMITED.

HEAD OFFICE, TORONTO.

Incorporated December, 1891; Authorized Capital Stock, \$1,000,000;
Paid Up, 854,200.

President—W. D. Matthews; Managing Director—John H. G. Hagarty; Superintendent—A. A. Wright.

DIRECTORS.

E. B. Osler.
C. S. Gzowski.
Geo. F. Hagarty.

G. R. Crowe.
James Carruthers.
John H. G. Hagarty.

Captain Crangle.

Dates on which Dividends are payable 1st January annually; Rate of last Dividend, 10 per cent. per annum.

THE TOLEDO LIGHT & RAILWAY COMPANY.

TOLEDO, OHIO.

Incorporated July 1, 1901; Capital Stock, \$12,000,000.

DIRECTORS.

President—Albion E. Lang; Toledo; Chairman of Board
Warren Bicknell.

Vice President, E. W. Moore, Cleveland.

Vice-Pres. and Gen. Manager, L. E. Berlstein, Toledo.

Secretary—H. S. Swift; Treasurer—S. D. Carr.

DIRECTORS.

R. B. Van-Cortlandt.
J. R. Secor.
Barton Smith.

J. F. Demers.
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Rate of last Dividend 6 per cent.

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W. M. Aitkin.

Secretary—Fred H. Oxley; General Manager—Fred W. Teele.
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